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ORIGINAL

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room ITC Building, Tamuning



Thursday, October 13, 2016 1:38 p.m. to 4:00 p.m.

GUAM LAND USE COMMISSION Regular Meeting

Thursday, October 13, 2016

Department of Land Management Conference Room 3rd Floor ITC Building, Tamuning

MEMBERS PRESENT:

Mr. John Arroyo, Chairman

Mr. Victor Cruz, Vice Chairman

Ms. Conchita Bathan, Commissioner

Mr. Tae Oh, Commissioner

Mr. Michael Borja, Executive Secretary

Ms. Kristan Finney, Legal Counsel

PLANNING STAFF PRESENT:

Mr. Marvin Aguilar, Guam Chief Planner

Mr. Penmer Gulac, Case Planner

Ms. Celine Cruz, Case Planner

Ms. Cristina Gutierrez, Recording Secretary

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION Attendance Sheet

Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

Date of Meeting: Time of Meeting:	Thursday, October 13, 2016	X GLUC X Regular Special Quorum Non-Quorum	GSPC Regular Special Quorum Non-Quorum
COMMISSION MEME John Z. Arroyo, Chaire Conchita D. Bathan, C Victor F. Cruz, Vice Cl Tae S. Oh, Commission Vacant, Commissione Vacant, Commissione	man Commissioner nairman oner r	SIGNATURE	2
Michael J.B. Borja, Exec Kristan K. Finney, Legal Marvin Q. Aguilar, Chief Frank Taitano, Planner I' Penmer Gulac, Planner I Celine Cruz, Planner IV M. Cristina Gutierrez, Wi	Counsei Planner V	Mby kita k 7' Dem Mimmy Mighting	

GLUC Form 19 - GLUC Commission Attendance Sheet

ADJOURNMENT:

4:00pm

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION

Speaker's Sign-In Record

Location: Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

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TROW BROOKS	AST	
Michael D. Flynn, Jr.	ART DWHERE ASSOCIATION	477-7059
ZAN SWAVELY	U.K. CHO ABY OA	638-8029
HAIPI Suspear	ABC '	127-5382
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GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION

Public Attendance Record

Location: Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

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GUAM LAND USE COMMISSIONER REGULAR MEETING MINUTES Department of Land Management Conference Room, ITC Bldg., Tamuning Thursday, October 13, 2016 • 1:38 p.m. to 4:00 p.m.

I. Attendance

Chairman Arroyo called the regular meeting of the Guam Land Use Commission for Thursday, October 13, 2016 to order at 1:38 p.m., noting a quorum.

Present were: Chairman John Arroyo, Vice Chairman Victor Cruz, Commissioner Conchita Bathan, Commissioner Tae Oh, Executive Secretary Michael Borja, Legal Counsel Kristan Finney, Chief Planner Marvin Aguilar, Planning Staff Celine Cruz, Penmer Gulac and Recording Secretary Cristina Gutierrez.

<u>Chairman Arroyo</u> before we get to the Minutes, you have before you the Agenda. Are we satisfied with the order of business today or would anybody care to make any changes to the order of the agenda?

<u>Vice Chairman Cruz</u> I would like to make a change Mr. Chairman. If we could take New Business and move that toward the front and put the Old/Unfinished at the end.

<u>Chairman Arroyo</u> okay, so the change is to move Items B and C up to the front of the agenda and move Item A to back of the agenda. Is there any problem with that? [Commissioners responded that they did not have a problem with the change] Okay, so we will make that change to the agenda.

II. Approval of Minutes

<u>Chairman Arroyo</u> on the Minutes, Cris emailed this to us I think last week sometime. I'll entertain a motion on the Minutes whenever you are ready.

<u>Commissioner Bathan</u> Mr. Chair, I will make a motion to approve the GLUC's regular meeting Minutes of Thursday, September 8, 2016 subject to minor edits that will be submitted to Cris at the end of the day today.

Chairman Arroyo there is a motion by Commissioner Bathan, a second?

Vice Chairman Cruz I second.

<u>Chairman Arroyo</u> seconded by the Vice Chair; any discussion on the Minutes? [None noted] All in favor of approving the Minutes for the September 8th meeting please say "aye" [Chairman Arroyo, Vice Chair Cruz, Commissioners Bathan and Oh], all opposed say "nay."

Chairman Arroyo Minutes are approved.

[Action – motion to approve the September 8th, 2016 was passed unanimously; 4 ayes, 0 nay.]

III. New Business

Zone Change

B. The Applicant, Immanuel W.S. Choi represented by Ignacio F. Santos; request for a zone change from "A" (Rural) to "M1" (Light Industrial) zone for the expansion of an existing auto repair shop, on Lot 5223-6-NEW-6-R1-NEW-1, in the Municipality of Barrigada, under Application 2013-20. Case Planner: Celine Cruz

<u>Celine Cruz</u> summarizes staff report to include facts/purpose, public hearing results, staff analysis/discussion, conclusion, and recommendation. [For full content/context, please refer to Attachment A.]

[Attachment B - Staff Report dated October 5, 2016]

Chairman Arroyo any question of the staff?

<u>Commissioner Bathan</u> actually I have a minor question. Celine, on the report you mentioned that the public hearing at the Barrigada Community Center was done on February 6, 2016?

Celine Cruz I'm sorry, no that's not correct. It is probably 2013.

Commissioner Bathan actually the Notice to Rezone shows February 6, 2014. So, is it '14, '13, or '16?

<u>Celine Cruz</u> it is 2014; this was accepted April 20, 2013 and it took about a year to get the public hearing going.

<u>Commissioner Bathan</u> yes that comes to my next question. The application was accepted in November 2010 and it is already almost

[Mr. lke Santos comments that it was accepted in 2013]

Commissioner Bathan and so the ARC would be November 18, 2013, not 2010 on the report?

Celine Cruz yes, 2013; yes I'm sorry.

[Discussion ensues on the chronological dates for this application.]

<u>Celine Cruz</u> the application was accepted on November 4, 2013, heard by the ARC on November 18, 2013 and on February 6, 2014, a public hearing was held.

<u>Chairman Arroyo</u> any other questions? [None noted from the Commissioners] The zone variance that was approved in 1989, were there any conditions to that? Do you know?

<u>Celine Cruz</u> yes, it was that the property be completely fenced which it is. The hours of operation be limited from 8:00 a.m. to 5:00 p.m., Monday thru Saturday. They had to revise a parking plan to show employee/customer and repair vehicles. They had to submit a landscaping plan. Comply with SDRC permitting agency requirements. There was a five-year time allowance; and install some type of soundproofing.

Chairman Arroyo a five-year time allowance to install a soundproofing

<u>Celine Cruz</u> no, it was a five-year time allowance I believe.

<u>Chairman Arroyo</u> and have they come back for a renewal?

Celine Cruz no.

<u>Marvin Aguilar</u> it is expired and there were no other actions taken since that time and the expiration date.

<u>Chairman Arroyo</u> can you go back to the picture, the sky-view picture. Are those cars there or are those cars being repaired or are they just being stored there? [Referring to the photos on the monitor]

Celine Cruz it does not look like that now. This is an old picture; it is very clear...the lot.

<u>Marvin Aguilar</u> this is facing towards Rev and Tax, and so you see four rows and they are down to one row. So, there has been a significant change and improvements by cleanup. [Continues to explain photos on the monitor to include site location, office, etc.]

<u>Chairman Arroyo</u> any other questions? [None] Okay, so we will invite the applicant and his representative to step forward and do your presentation.

<u>Ike Santos</u> (representing the Applicant Immanuel Choi] I know that is an old picture because the picture that I took is much more recent. Instead of three or four rows, there's only just one row of cars there. But, if you look at that picture you could see all the buildings there are basically all warehouse type buildings. There is no residential other than this situated in

[Shows the Commission a more recent photo of the subject lot and its surrounding buildings to include Conwood, Revenue and Tax, a new warehouse that was recently built, two warehouses approved by the Commission]

<u>Ike Santos</u> all of this area actually falls within the APZ-1 or Accidental Potential Zone 1 within the AlCUZ (Air Installation Compatible Use Zone). These areas here were also rezoned through this Commission (these two lots rezoned to M-1). So, basically all the lots up this way have all been rezoned to M-1 and they also fall within the APZ-2 area. So, this is the APZ-1 and this is the APZ-2 and this lot was also rezoned to M-1.

Vice Chairman Cruz so, where's the parking in question.

<u>Ike Santos</u> (points out the location of the parking area) and I think there are other applications coming in to rezone this lower area too. Also recommended that this area also be rezoned to M1 as well. This is where the power pole actually drops down because of planes that fly over in this air and the pole I think drops down to, I think, 20 to 30 feet and goes all the way down towards the overpass.

<u>Commissioner Oh</u> you know that warehouse on the top, that new warehouse. What is the main use of it, which company?

<u>Ike Santos</u> actually this is used to store retail; they are wholesalers. I believe it belongs to Kim...they used to operate behind the Kmart area and they were only leasing it. So, since they owned this property they wanted to move their business to this location.

Commissioner Oh is it still in operation.

Ike Santos all of these are in operation.

<u>Commissioner Oh</u> there's two additional warehouses right next to it.

Ike Santos this is a contractor.

<u>Commissioner Oh</u> compared to the previous Board action providing some type of ... it was a zone variance right. Has there been any change, I mean are they trying to ... did they acquire more lot and are they trying consolidate?

ike Santos no, it is still the same lot.

<u>Commissioner Oh</u> so, same lot and it was approved for a zone variance and now they're asking for an actual zone change.

<u>Ike Santos</u> yes, and if you look at the picture of the building the way it looks it needs a lot of repair. I think this is the purpose of doing the rezone so he can get a leverage on going to the bank and getting the money to upgrade the facility.

<u>Chairman Arroyo</u> are they storing cars as a junkyard there at one point in time? Was it being used to store junk cars?

<u>Ike Santos</u> I am not sure about that but, I used to help a friend out and some people would bring their cars in and never come back to pick it up and ends up sitting in the yard. So, I am not sure how

Vice Chairman Cruz does it show there the cars or no.

Ike Santos no, it is cleaned up. This was shot yesterday.

Commissioner Bathan those cars were being by the shop or ---

Ike Santos you can only see a very few cars here (referring to his photo).

[Discussion continues on the photos]

<u>Chairman Arroyo</u> the reason why I'm asking is because there is concern raised by the Bureau of Statistics and Plans regarding the storage of hazardous materials and fluid over the water lens and what are they doing to mitigate accidental spills or anything that can contaminate the water lens. What are they doing now ----

<u>Ike Santos</u> this is actually paved (again referring to the photo). Most of the area I know is mostly paved; mostly of it actually has been removed already.

<u>Commissioner Bathan</u> I know it is removed, but it does not prevent from parking the same number of cars down the line when your business is operating. So, that is why the Chairman was asking what are they doing to respond to the Bureau of Statistics and Plans.

<u>Ike Santos</u> I know their business is in repair or I guess body repair is what they requested for. So, it's not mechanical. And I think if there was an issue with a car that was leaking usually the first thing they do after an accident is always clean it up before it's moved.

<u>Chairman Arroyo</u> I'm just concerned with that many cars if it should ever get back to that there's fuel in, there's gas, coolants and things like that. Hopefully, it won't look like that and hopefully they do have, I mean, they wouldn't necessarily have to have plans to address these types of hazardous spills and things like that. They do have procedures and equipment in place to respond.

Ike Santos uh huh.

Chairman Arroyo any other questions? Oh, why didn't they come back five years after the

Ike Santos I have no idea.

<u>Chairman Arroyo</u> and so I guess they need to come back now because are they ... it was discovered that the variance had expired and so they need to get this done so they can get the financing. Is that what you are saying?

Ike Santos yeah.

Chairman Arroyo any questions?

Commissioner Bathan we didn't get any Guam EPA position statement?

Chairman Arroyo no, we didn't get that. Did we hear from Guam EPA at all?

Marvin Aguilar I don't think we have anything from them at this time.

<u>Celine Cruz</u> and I also want to say that it is sometimes difficult to get position statements out. Like Department of Agriculture and EPA an application cannot move forward without an Agricultural Impact Statement with an agricultural which is the reason why it's here now before you in 2016. We only just got the Agricultural Impact Statement in July of this year, and that was after several attempts to get some type of response from the Department of Agriculture.

<u>Commissioner Bathan</u> but considering the nature of the business, I think that it is important that we get something from those agencies because we don't know what conditions they will....

Vice Chairman Cruz they never showed up at the ARC then?

<u>Marvin Aguilar</u> yes, they did. Whatever approval you give this applicant to move forward to...at a minimum receive a building permit to, to enhance or renovate the place or for that matter to operate as a car repair facility, their application will go before Guam EPA for their regulatory requirements.

Chairman Arroyo but this is an existing operation. Would it ever go back to that?

Marvin Aquilar oh definitely it will go back. And every year they have to submit, I think, a qualifying certificate of some sort to show that they are in compliance with their operational ... a 401 or 404....clean water protection requirement. So, they have to prevent spillage and whatnot.

Michael Boria have they been cited by EPA recently during this whole period time?

Marvin Aguilar I don't know, but they do random checks with the different operations. And whether that may have changed I don't know.

<u>Chairman Arroyo</u> I'll open the floor for public comments at this time if there is anybody who would like to say anything regarding this application please step forward.

Public Comments [seeing none, Chairman Arroyo closed public comment period]

<u>Chairman Arroyo</u> Chit, do you feel strongly that we need to hold off on this until we hear from EPA?

<u>Commissioner Bathan</u> well, considering the fact they seem not to have any violation that is known on environmental concerns, I think I am okay to move forward with the application. Anyway, whatever conditions will be addressed during the permitting process.

Chairman Arroyo anybody else.

<u>Commissioner Oh</u> I have a question for the staff. Other than, within the building Law, are there any requirements for such type of use like especially for auto repair facilities. Are there certain restrictions or any type of requirements that are needed for that type of use?

<u>Marvin Aguilar</u> yes, there are specific requirements for industrial uses particularly for car repair, body repair. So, EPA is very, very big on oil spill containment, storage and disposal; things like that. But they are at that agency level, those regulations always, you would think, kick in each time every year per say. There is a certification period where they go out there and they make sure that they are still compliance. They do it the gas stations and what not and so

Commissioner Oh I'd like to ask the applicant ---

<u>Ike Santos</u> I was going to say something. It is a body repair shop not a mechanical repair shop. They don't touch the engine or deal with oils or anything like that. They deal with the body outside, I mean the shell of the car, and they paint. Even if they were still proceed process they still have to go through the permitting process to repair or fix anything. And I know that EPA is very strict when it comes down to uses like this in terms of how you control spillage or things like that.

<u>Vice Chairman Cruz</u> they do a lot of repairs from damaged cars that are from accidents and things like that right?

Ike Santos body repair ... yes.

<u>Vice Chairman Cruz</u> and if the automobile comes in and it's not a total loss and it requires some mechanical repair what do they do.

Ike Santos I have no idea about that.

<u>Commissioner Oh</u> but when a vehicle gets into an accident normally they are going to have mechanical issues, and if vehicles are parked in that manner, sure, but sure there will be body work involved but also there will be some mechanical work involved right?

Ike Santos but they are body repair not mechanical repair.

<u>Commissioner Oh</u> no, but considering the amount of vehicles parked on the site in that manner I'm sure some of them had mechanical issues.

Ike Santos not like that up there though.

Commissioner Oh there's still evidence the amount of vehicles that are parked there.

<u>Ike Santos</u> let me say something. A car comes in for usually ... people use especially shops they like to take parts to replace a part on their car like a vendor, a door or to that nature. That's probably why you see some cars there because they use the cars to repair some of the parts that become damaged.

<u>Vice Chairman Cruz</u> so they store it like a yard almost like a junkyard. If they do that that's almost the same as the, the one down in Harmon.

Ike Santos Harmon is much bigger than this.

<u>Vice Chairman Cruz</u> I know, but you're trying to tell me that if a car comes in and there's a problem with the engine they're just going to work on the body, and then give the car back to the customer the car and say that's it man that's all I can fix here.

<u>Ike Santos</u> well, if you are going to a body repair shop I don't think you would expect to get your car engine ... especially if they are not in the field of engine repair.

<u>Commissioner Oh</u> no matter how, I guess, careful the actual owner is when it comes to vehicles like this, I'm sure, I'm pretty sure there will be some type of spillage occurring. But, my question was what does the current landowner have in place, what kind of plan do they have in place in terms of mitigating any types of spillage. Do they have any drains, umm....

<u>Ike Santos</u> I think if you were to move a car and if there was a need to clean...that's where you would address the situation. If the whole car is leaking, it's not advisable to tow the car all the way to the shop.

Commissioner Oh but it does happen. It does happen.

Ike Santos I would think that there's a there's a and I see some shops they have this absorbent pads. When there is a leak they would actually throw it under and collect everything that is absorbed ... until they can get something in to catch in a difference container to collect the spillage. But, I know there are absorbent pads that are used by shops.

<u>Chairman Arroyo</u> well, I think what Commissioner Tae is asking is that is this property owner have that practice in place. Does he have these procedures in place so that, I mean, it looked like that once before. There is a possibility it could look like that again and I'm sure, you know, he didn't drain those cars of all the gas, the oils, the coolant, remove the batteries and anything else that could be hazardous. So, if that's the case he should have some procedures in place to mitigate.

<u>Ike Santos</u> I'm pretty sure they have procedures in place and I know EPA would require them to do that as well.

<u>Kristan Finney</u> I was wondering, because the ARC meeting was some time ago, and I was just wondering if you considered anything that might have changed in the ten years since then.

<u>Marvin Aquilar</u> the application is still a request to rezone to M-1. Other than the administrative requirements such as the submission of an AIS or the Agricultural Impact Statement, it has not changed in that respect. And that being said, when we assess this application it is really looking at at the subject lot in comparison to its surrounding areas and whether there is compatibility achieved by this or any other type of industrial related use that maybe applied to this property if it is rezoned to M1.

<u>Chairman Arroyo</u> I don't see any, well at least...I don't object to the rezoning. It kind of just puts it in line with the surrounding vicinity. It is just the issue of the hazardous waste.

<u>Marvin Aguilar</u> if I may Mr. Chairman. There is an insert in the Zoning Law under M-1 where junkyards if there is an issue today or maybe in the future of it turning into a junkyard, there is a mechanism in there to restrict junkyard use and basically you need to get a Conditional Use Permit.

Commissioner Bathan under M1.

Marvin Aguilar yes. Likewise under M1, if he should do any type of activity above and beyond on what he is proposing at this point where it can be, you know it could cause some obnoxious smell or noise that could be a trigger as well. Unfortunately, we are not the, although we are the zoning compliance people we are not the zoning compliance enforcers. That relationship has to be established and be firm before we can actually start going out and making sure everybody is doing what they are proposing.

Chairman Arroyo but would that be something that EPA would have to do.

Marvin Aguilar and therefore getting around that that's going through EPA to enforce those requirements.

Commissioner Oh what I'm trying to get at is basically if you take a look at the picture over there where all the vehicles are parked. That is not an impervious surface. That's a grass area and that means that if there's any type of leakage I'm pretty sure that if there is any type of damaged vehicle even if it's parked for certain amount of time there is going to be spillage there is going to be (inaudible, excess noise). I'm not going to assume that it happened. I'm not going to assume that has occurred. At the sametime since we are in discussion of a zone change and through this zone change, I'm trying to figure out what work will be completed so that there's grass areas ... I know for a fact that certain auto body shops are required to concrete all the surfaces where all the vehicles are going to be parked so that any type of spillage and in case if there is any type of runoff that they have to be contained within the property. Assuming those are the requirements, is the current landowner willing to abide by those conditions and make improvements I'm trying to figure out to what extent are they trying to make improvements on this property.

<u>Ike Santos</u> if that's what it takes for them to do the work, I mean to move forward, then they have to comply with. It's part of the conditions of the development.

<u>Vice Chairman Cruz</u> in that picture you have is the area surrounding the building are they paved or still the same.

Ike Santos if it needs to I can have the area paved (Vice Chair Cruz interjects).

<u>Vice Chairman Cruz</u> I didn't ask if you need to. In the current condition, I said with the current that and that looks different the existing condition is there paving around. (sic)

<u>Ike Santos</u> I know there is paving in front of the building but I never go around to the back to look at the

<u>Commissioner Bathan</u> and based on the application if I am reading it correctly, they can have as many as sixty-five cars because there is sixty-five parking stalls; and so, I am assuming it covers all the other ... rest of the cars that they will be repairing.

<u>Commissioner Oh</u> do you have any idea as to what the current landowner is what kind of improvement he is ... he has plans? I know it was discussed here that he has plans to renovate and do some type of expansion. So, can you give us a little more detail on that.

<u>Ike Santos</u> he is looking to expand towards the rear. If you could see that there is a big area in the back. So a lot of those cars would have to be cleaned out there is really no rear on this

property, but what I am talking about to the sides; closer to that warehouse, and that is where the expansion will occur.

Commissioner Oh what's the use?

Ike Santos it's still the same.

<u>Commissioner Oh</u> same? I know he has a repair facility and also same facility. Is the use going to be safety inspection or is it going to be

Ike Santos safety and body repair. To make that improvement you need to clean everything you see there. I'm not sure that's what we see there now, but I know that would have to be all cleared out to make the improvements.

Chairman Arroyo any other questions? [None noted]

I think we have a couple of options here. If we are concerned about accidental spillage and looking like that, we can continue with a zone variance. But, if we are confident that the owner is going to ... if he does already have in place some procedures to mitigate any hazardous waste spillage that could affect the underline aquifer then we could move forward their request to rezone. So, I will follow...if there is any discussion now put down on the table.

Vice Chairman Cruz well, I mean ---

<u>Michael Boria</u> excuse me Mr. Cruz. The annual business license renewal doesn't require an EPA review, but if there was going to be a building permit required for any kind of expansion, if they do the expansion, then of course the EPA review would fall into place and whatever conditions at that time would then have to be applied. But, that's only if they do expand and go through the building permit process.

<u>Commissioner Oh</u> I'm trying to figure out the extent of expansion and extent of construction within the property because if it is minimal then there won't be any type of EPA review or any type of regulation review. If it is a major improvement, major (Mr. Santos interjects)

<u>Ike Santos</u> it's 50-feet x 140-feet; it's 50-feet out and 140-feet wide.....

<u>Commissioner Oh</u> I'm pretty sure that in case, in that case will most likely be reviewed by all the agencies which I am confident at that point that...if there are any non-compliance then they will come into full compliance. So, I'm trying to figure out the extent of the construction itself and how soon they plan to move on. Do you have any idea?

<u>Ike Santos</u> they've been waiting for four (4) years.

Vice Chairman Cruz to me I have no problem with change of zone. It's just that, you know

Chairman Arroyo it's a shame that we hadn't heard from EPA on this.

Vice Chairman Cruz I think we should just move on.

Chairman Arroyo if that's your pleasure, I'm ready to entertain a motion.

<u>Commissioner Bathan</u> I would like to make a motion to approve the request for a zone change from agricultural zone to M-1 light industrial zone for expansion of an existing auto repair shop on Lot 5223-6-NEW-6-R1-NEW-1, in the municipality of Barrigada under Application No. 2013-20.

Chairman Arroyo there's a motion on the floor by Commissioner Bathan, is there a second.

Commissioner Oh I'll second.

Chairman Arroyo second by Commissioner Tae. Is there any discussion on the motion?

<u>Commissioner Bathan</u> it's a zoning that is compatible to the existing surroundings and also because it's within the AICUZ zone, I think this is proper to rezone the property.

Chairman Arroyo any other discussion? [None]

So on the motion, all in favor say "aye" [Chairman Arroyo, Vice Chair Cruz, Commissioners Bathan and Oh], all opposed say "nay." Motion carries.

[Motion to approve the Zone Change request was passed unanimously; 4 ayes, 0 nay]

Chairman Arroyo let's move onto the next item on the agenda -

Zone Change

C. The Applicant, Sunny Plastic Guam, Inc. represented by Harry D. Gutierrez; request for a zone change from "R-2" (Multi Family Dwelling) to "M-1" (Light Industrial) zone, for compliance of existing warehouses, on Lot 5027-5-R1, in the Municipality of Tamuning, under Application No. 2016-12. Case Planner: Penmer Gulac

<u>Penmer Gulac</u> summarizes staff report to include facts, purpose, location, surrounding zoning, staff analysis/discussion, public hearing results, conclusion and recommendation. [For full content/context, please see Attachment B.]

[Attachment B - Staff Report dated October 6, 2016]

<u>Marvin Aguilar</u> the term of eight-years expired on July 14, 1997. It is our understanding as with the other application prior that this zoning designation efficiency was discovered at the time the applicant was trying to refinance the property and it was identified in their Title. And perhaps Mr. Gutierrez could shed more light on that.

<u>Chairman Arroyo</u> since you are on that Penmer. So, the variance was granted in 1989 (Mr. Gulac responds "yes, Mr. Chairman"]. On your write-up on Page 3, fourth paragraph beginning with "warehousing on the site." Should that date 1997 be eight years, should be 1998. Alright, go ahead.

[Mr. Gulac continues with the staff report.]

Marvin Aguilar I actually took various photos of the property, but had to try to do this close-up but the fencing got in the way. It is a very large facility with inter-connecting enclosed units throughout the property. For the record though, it really is not in operation it is abandoned. I mean not abandoned it is secured. There is no activity. You don't see with the exception of, I don't know if that is the loading dock in between the two buildings. Again, you cannot see anything and even if you went up close, it's far towards the back of the property. There were pallets that were stacked and looked like they were packaged to be shipped out or some kind of material that was either coming in or going out. But, there were no vehicles on the two occasions that I was out there; there is no operational activity. It is well kept and maintained.

<u>Chairman Arroyo</u> so you don't know how long it had been sitting vacant?

Marvin Aguilar no sir. I suspect it was the discovery of the zoning discrepancy.

Penmer Gulac maybe Mr. Gutierrez has information on that.

<u>Harry Gutierrez</u> it has been vacant for about year. They are in the verge of reorganization and they moved all of their operation over to, behind the old Bank of Hawaii in Tamuning in that 3-story building there. They have something in the future for the building. When they bought the building in 1995 ----

<u>Chairman Arroyo</u> Harry, I'm sorry to interrupt. We will just finish up with the report and get back to you. Anything else Penmer you want to add?

[Mr. Gulac continues with the staff report.]

<u>Chairman Arroyo</u> any questions? [None noted from the Commissioners] Looking at this map of the radius; to the left and the right of the property it is surrounded by R-2, and then above and below it is M-1. At the public hearing were there any property owners who owned the R-2 properties were they present at that public hearing?

Penmer Gulac Mr. Chairman, only one landowner came to the hearing and he owns the Global Recycling Center just south of this; it borders the subject lot, which is M-1, and he said he had no objections. The MPC encouraged those that were in attendance to seek more public input. In fact, we had another town meeting and it was only Mr. Gutierrez and I that showed up at the hearing. With that, the discussion at that time during the town meeting those MPC members had suggested that they continue to keep that activity as a light industry which why they are requesting for rezoning, and no one has come out or made testimony to the Mayor's Office relevant to this request rezoning.

Chairman Arroyo you know those two R-2 lots, what's on them?

<u>Penmer Gulac</u> apartment building on the north side and also an apartment building on the western side, which is R-2.

<u>Marvin Aguilar</u> (referring to map on monitor) so this is an apartment complex here (western), this is commercial/retail and also apartments. There is also an apartment complex at the very back of the north side of the road, Chalan Kakkak to the very end here.

Vice Chairman Cruz so, Chalan Kakkak is their access?

Marvin Aguilar yes sir.

Penmer Gulac that's the main thoroughfare of those lots.

<u>Michael Borja</u> Marvin, this map shows that there should be a roadway that comes along the western side of the lot. The aerial looks like something is blocking it.

Marvin Aguilar there's an easement here. That is not open, overgrown.

Michael Borja is that building next to them encroaching into it.

Marvin Aguilar I see a corridor there that separates the two, a grass corridor.

Penmer Gulac the perimeter fence is right on the property line.

Michael Borja why did the roadway not continue through?

Marvin Aquilar I guess it's just not being used as this time. It's here. You can see the separation between the fence line here (referring to the photo).

Michael Borja did somebody block off that road?

Marvin Aguilar it's not blocked off. It's just like a grassy

<u>Penmer Gulac</u> the Mayor suggested during the meeting that Sunny clears that road area for the safety of the neighborhood.

[Discussion ensues]

Chairman Arroyo so did Sunny Wholesale, Sunny Plastic did they agree to maintain that road?

<u>Penmer Gulac</u> we brought it up to the Mayor and they said they would talk to Sunny to make sure that that area is cleaned up because sometimes there's fire or somebody will hide there. It's to protect the interest of the other neighbors. There are still residents that traverse there or walk through there because it connects to the M-1 zone where Westco warehouse is. Also, across from Kakkak is Pacific Drilling warehouse that rezoned by the GLUC.

Chairman Arroyo any other questions? [None]

Harry, if you could state your name please for the record.

<u>Harry Gutierrez</u> (representing Sunny Wholesale) To answer some of your questions. Sunny agrees, he wants to do it anyway cut the grass ten feet away from the fence because he's been having problems with people climbing over, sleeping overnight. And he is in the state of reorganizing the corporation right now. He didn't abandon it he's using it as storage for now until he figures what he wants to do with it.

<u>Chairman Arroyo</u> Harry, aside from the expired use variance, can they legally occupy the building or did they lose any ability to do that. Are they permitted to use the building?

Harry Gutierrez I couldn't answer that.

<u>Marvin Aguilar</u> the property is still R-2 zone, the business license would probably be rejected.

Chairman Arroyo would that be the case?

<u>Harry Gutierrez</u> that's the case. What happened there was he bought the building in 1996 where the variance expired in 1998, and he didn't know about it. I met him here a few times 2011 and he asking questions how he could rezone it make it back to legal. He finally hired me in 2014.

<u>Chairman Arroyo</u> so, he's pushing now because he wants to get some financing to improve the property is that what it is?

Harry Gutierrez no, I don't think he needs financing.

<u>Chairman Arroyo</u> but he is looking to improve the property.

Harry Gutierrez improve and wants to reorganize his company.

Chairman Arroyo anything else? [None noted]

Okay, so I will open the floor to public comments. Is there anyone who wishes to say anything about this application please step forward.

Public Comments [Seeing none, Chairman Arroyo closed the public comment period.]

Marvin Aguilar sir for the record, we tried to send this out as well and include it as part of our presentation but this came in yesterday. It's a letter from the Mayor of Tamuning. If you would like I could read it.

<u>Chairman Arroyo</u> just for the record, I think we have a couple of things here. We have a copy of the posted sign [Please see Exhibit 1] and we have the letter from Mayor Rivera.

Marvin Aguilar reads the letter from Mayor Rivera's office dated October 11, 2016. [For full content/context, please see Exhibit 2].

<u>Chairman Arroyo</u> so, we got a letter of support the Mayor. Anything from the MPC? Nothing? Just from the Mayor's Office nothing from MPC?

Marvin Aguilar they were referring to the MPC, but we would prefer to have it in the form of a Resolution.

<u>Chairman Arroyo</u> Harry, anything you want to add before we move forward? [Mr. Gutierrez responds "no."]

<u>Commissioner Oh</u> I have a question for staff. Considering that today we had two cases where there was some type of variance granted in the past and of course it has expired and they never came back to renew. What are the exact repercussions of not renewing and are there any?

<u>Marvin Aguilar</u> it's not embedded in the application! guess back then. Of course, we were not here when these applications were approved. But, you would think that a non-renewal or expiration it would hit them where it hurts and basically you won't be able to operate to do what you do to conduct your business. That being the case there is obvious lag in enforcement. As far as immediate repercussion or something that we can retroactively reconsider there is nothing.

<u>Commissioner Oh</u> so what prevents let's say a landowner from getting a variance for a new, let's say to build a warehouse, let's say at a later point to make changes to the use. Let's say they wanted to Currently there is a warehouse and let's say someone wanted to put an auto repair facility.

<u>Chairman Arroyo</u> unfortunately Tae that requires people to go and spot check these things. Over the course of my tenure on the Commission, I have seen these things pop up every once in awhile. They do talk about being more proactive in monitoring these variances and any conditions that are attached to the things that we grant; setting up some kind of tickler system so that at least Planning Division is aware that of variances that are expiring and we need to be a little more proactive with getting back with the landowner and saying hey you need to come back to us to renew this or let us know what your plan is. I guess that is an issue internally the division has to work on.

Any other discussion? [None noted]

If you are ready to move forward, I am ready to entertain a motion on this request.

<u>Commissioner Oh</u> Mr. Chairman, I move to approve the zone change from "R-2" to "M-1" zone for the applicant Sunny Plastic Inc. represented by Harry D. Gutierrez for compliance of existing warehouses on Lot 5027-5-R1, in the municipality of Tamuning under Application No. 2016-12.

<u>Chairman Arroyo</u> there's a motion by Commissioner Tae, do I have a second.

Vice Chairman Cruz I second.

<u>Chairman Arroyo</u> second by the Vice Chair. Any discussion? [None noted]

All in favor of the motion say "aye" [Chairman Arroyo, Vice Chair Cruz, Commissioners Oh and Bathan], all opposed say "nay." Motion passes.

[Motion to approve Application 2016-12 passed unanimously; 4 ayes, 0 nay.]

Chairman Arroyo let's take a five (5) minutes recess.

[Commission recessed at 2:45 p.m. and reconvened at 3:00 p.m.]

IV. Old or Unfinished Business

Horizontal Property Regime

A. The Applicant, Alupang Beach Tower; requests issuance of its Supplementary Final Public Report for the Alupang Beach Condominium, on Lot #2015-1-REM-NEW-2 and Lot 131-REV-Unit 1, in the Municipality of Tamuning, in a "C" (Commercial) zone, HPR No. 92, under Application No. 1992-39C. [Continuation – GLUC hearing of April 14, 2016] Case Planner: Celine Cruz

Chairman Arroyo go ahead with your presentation.

<u>Celine Cruz</u> reads Commission Brief to include purpose, background, discussion, staff recommendation. [For full content/context, please see Attachment A.]

[Attachment A - Commission Brief dated October 10, 2016]

<u>Chairman Arroyo</u> for the record, we also had received copies of the declaration of mailing, a notice of special meeting to the owners, notice of declaration of service and a letter dated April 13, 2016 addressed to the Chairman from Attorney Todd Thompson.

[Refer to Exhibit 3 for full content/context of documents.]

Any questions of the staff? This is a pretty complicated application one that has an extensive history before several Commissions, and last we heard of this we had to table it because of representation issues and others. If there aren't any comments, I would like to open it up to the applicant's representative; if you could please state your name.

Michael D. Flynn, Jr. I am here on behalf of the Alupang Beach Condominium Association, that's my role.

Terry Brooks on behalf of Mr. Cho.

Dan Swavely also behalf of the majority owner Mr. Hee K. Cho.

<u>Chairman Arroyo</u> the recommendation of staff is to table the application because a statute in the regulation 45108 did not appear to be addressed at this point in time. Are you prepared to address that now or

Terry Brooks well, I would be happy to take a shot at it. The main thing that we are requesting right now is simply the conversion of 108 units from a single unit that is designated as a hotel unit to 108 separate condominium units. These units are all there already. There is no construction that needs to be done. There's no digging. No nothing. It's just a simple designation by this body that these units that were constructed as condominiums in the first place be reverted back to condominiums.

Chairman Arroyo isn't there a Phase II plan and has that Phase II require some construction?

<u>Terry Brooks</u> it requires construction, but it's the type of construction that it's entirely within the owned perimeter Mr. Cho's units. So, the only construction that is being contemplated is in several areas, commercial restaurants have been removed and those are just sitting vacant now doing nothing. Those will be built out. So, what you will have is the construction of individual condominium units, but again, nothing structural. Nothing having to do with any of the common elements that the owners, it will strictly be interior type work.

<u>Chairman Arroyo</u> are you, or do you have anybody here, an engineer that can explain the extent of the construction that you are proposing and to address the issues of safety and soundness and everything else with respect to 45108?

<u>Terry Brooks</u> I would ask Mr. Swavely, but he does not feel that he is in the position to do that. So, maybe what we should do is bring back the architect who ----

<u>Dan Swavely</u> you know Mr. Chairman and fellow Commissioners, we were caught a little bit offguard by this challenge of the work-prohibited preservation. We would like to address...continue to address it like this before we actually start with the formal presentation that we had prepared, if you don't mind. And then if we feel like we can lay to rest the reason for the challenge of the prohibited work issue then we would continue with our presentation as normal. But, if we cannot come to an agreement on that today then we would like to withhold the formal presentation until next time when we come back with more information regarding prohibited. So, we appreciate your inquiries regarding getting this work prohibited thing clarified. There is not much more, short of going through the plans. But we can really say regarding the answer to your questions regarding the architect and engineer in attendance, we could have done that, we could have done that actually and put this thing to rest today, I feel. But honestly, we were a little bit offguard with this work prohibited because it hadn't come up before.

Chairman Arroyo I see.

<u>Dan Swavely</u> it hadn't come up before by the Commission.

<u>Chairman Arroyo</u> I see, I see. So, if you want to go ahead you are welcome to do that. I would prefer to have (undecipherable) reviewed by our Planning Staff just to confirm basically what you're saying and we probably would after your presentation, probably would suggest that you provide something in writing to the Planning Staff so that they could vet it. That would probably be the way I think it would run.

<u>Dan Swavely</u> well, the issues at stake for our return today were really this; we were here in 2012, and you approved it. We failed to timely file the supplemental public report. The Homeowners Association and Law requires that we have that public report filed. We had a window of time. We inadvertently missed it. So, realizing that we came back in April and said, can you re-approve what you approved two years so that we can keep going again. And then the question that came up was two-fold; one, well y'all thought maybe we should go back to the Homeowners Association and make sure that they still approve, they still approve the first amendment because four (4) years had passed. It was a fully reasonable request. And also, where is our Counsel for the homeowners association, the apartment owners' association. So we did that. We had that meeting; duly noticed meeting, and the first amendment was approved by 93 percent majority, five percent didn't show and therefore did not object and less than two percent of tenant, of less than two percent did object. So, it's approved. And we also hired a Counsel for the homeowners association. So we really were thinking that the primary purpose

for today's Commission hearing was to come back and say, you approved it before we ask that you do it again so that we can file a report by Law necessary. You asked us to, wait, wait a minute let's go back and two more things; we did those, and that's why we thought we were here today to say I think we have everything in order. So, as complicated as the history of this project is it seemed to us the reason for this hearing is pretty uncomplicated. You asked us to do those things and we did. That is why we were a little off-guard with having to go down this road.

<u>Chairman Arroyo</u> and after review the prior Minutes to the meetings that were held discussing this matter, there was a lot of discussion on Phase I, Phase II and things like that. I know that there is a lot of explanation going on here. I think if it weren't for Phase II, for today, we probably wouldn't have an issue with this. But the fact of the matter is, this is something that we do need to address. I mean, we are bound to do that and I am sorry that you are finding out about it just now. But, we do need to ... we would be remiss if we didn't do that.

Terry Brooks then we will come back.

<u>Dan Swavely</u> that is the prerogative of your discussion and we want to do it right, we want to get it done. So, we hope we can get calendared as quickly as possible, of course after we submit what Celine is looking for.

<u>Chairman Arroyo</u> okay, we will accommodate you as soon as we can. Thank you. A couple of things before we adjourn. Cris wants me to remind you about (interrupted by member in the audience) yes go ahead.

<u>Todd Thompson</u> I represent Alupang Beach Club Incorporated. I was the fellow that submitted that letter last meeting, spoke to you. If I may be heard briefly about today's proceedings, I would appreciate it. This is Mr. Kasperbauer I think you probably know and Mr. Henry Simpson. We'll try not to take too much of your time.

But, there are some objections we'd like to make for record to the process that's happening here. We recently agree what the staff has indicated about the statute. We would point out however; there are actually three different positions that require unanimous consents here. In addition to Section 45108, there is also Section 45106(b), which requires unanimous concurrence of the homeowners when there is a common interest that is affected by the property. We maintain that there is in this case. And additionally, the HPR itself paragraph 21 says that where there is an alteration to a common interest element and unanimous consent is required. They went back and tried to do this process again the right way by having a homeowner's association meeting, but there wasn't unanimous consent. They haven't shown any unanimous consent, they just admitted that on the record that there wasn't. There were a lot of issues that were raised in Mr. Brooks' letter that was brought up today that I'd like to address perhaps this isn't the day to address those. But, we do disagree with their rebuttal to my letter submitted earlier.

But, there is a fundamental process objection here that we have to raise again to preserve the record in the event that this, *God* bid, winds up in litigation; and that is that what has been done here just doesn't, doesn't work under the Code.

Essentially, what happened was back in 2012 there was a Notice of Action. They had one (1) year in which to get a building permit and start work based on that. They didn't, they admit that they dropped the ball it didn't happen. Three (3) years after that, four (4) years later after the Notice of Action they asked for the Commission essentially to, in the words of I think Mr. Swavely, to re-approve which you approved previously. But it's not that simple. By the terms of that Notice of Action, recorded document, it says that it expires if you don't take action in a year it expires. Any definition of expiration means that's it, it's gone, it doesn't exist anymore. You can't just put a rubberstamp on it and make it happen again, and that's what they're trying to do.

Now, admittedly they finally gave notice to the homeowners association and had a homeowners association meeting, but that doesn't cure the defect that back in 2012 they didn't. Back in 2012, they didn't go through the procedures. The reason why we weren't here in 2012 was because we didn't know about it. So, they're trying to essentially put a re-treaded tire on a vehicle it just doesn't work that way. They have to go back as if what happened in 2012 never happened, so that the proper objections can be raised by the folks who were affected by this. So, the staff has an adequate opportunity to investigate what's an issue here. And that's our fundamental objection that we need to state here is that this is just not the way this is supposed to happen. They need to go back and do this the right way all over again, start from the beginning and try not to tack on or piggyback on what the Commission did four (4) years ago when there were different owners, different facts, different plans, and try to re-tread the thing.

Just to say one thing that just really jumped out at me in Mr. Brooks' letter that was filed and you all have had a chance to read it; but, there was stunning admission contained in that letter that said, whether the application is allowed or not the Chos are not going to go back to operating ABT as a hotel. So basically they're saying, well, we don't really care what this Commission does we're going to do it the way we want to do it, and I'm not sure why they're even spending the money to do this process but that's the way they really feel about it.

I point this out only because it's emblematic of the way the process has been handled for, ever since the Cho group came along. And I did mention to the Commission last time about the receivership that the Court put this into back in 2004. I know that is ancient history. Mr. Brooks' letter says that's apples and oranges these are new people this isn't Hibari Guam. But if I may, I'd like to lodge before the Commission a copy of Judge Lamorena's decision and order that was issued back in 2004. And the final page of that decision makes it very clear that the Cho group was parted (undecipherable) of what was going on there disregarding the rights of the minority owners necessitating Judge Lamorena to put the organization in receivership. Again, this is ancient history. But, they raised that issue and said, this wasn't us we had nothing to do with it. Yes, they did. And if I may, I think I brought sufficient copies for the Commission and we

can make this part of the record. Obviously, I don't expect anyone to read this today but we would like it to be part of the record.

[Exhibit 5 – Superior Court of Guam, Civil Case No. CV1983-03]

So, in conclusion and again I thank you for your indulgence in hearing this complicated matter at a time when you've already decided to table it. But, I just think that legally speaking I need to speak out and make these objections on behalf of my client because they involve both process, and also the fact that there are three separate compelling reasons why the staff is correct that this really needs to be carefully looked into and absent unanimous consent, the Commission can't simply approve it. I thank you very much.

Chairman Arroyo thank you. Anything else?

Henry Simpson I was one of the original partners in building the Alupang Beach Tower. And a lot of what's going on here boils down to parking. Our original application asked for a variance for parking. Even though our condominiums, 138 condominiums didn't need two parking spaces per unit, we tried to supply the majority of those condominiums with two parking spaces. And so all the penthouses and all the front units each had two parking places and various ones had storage that went with them made them more valuable, more usable. And so as things changed. the ... we, we couldn't supply everybody with two. So, the lower units as they came down were less valuable they were assigned one, which was legal. But, we put together a pool of 40 extra parking spaces and those 40 spaces were for guest parking for a person that only had one or even for somebody that had their two or had a little party, you know. So, there was a pool of guest parking spaces there. Those guest parking spaces were over and above the restaurant spaces. Over and above the beach club spaces, they were for everybody's common use. And so when the hotel when it was changed from a condominium and they took the 108 units and lumped it together as a hotel those 40 spaces went away and became part of a hotel group. So now, they say ... you know ... Mr. Brooks had said it would be just the same as it was before when it was first applied; you know, we're just changing it from hotels back to condos except those 40 spaces are gone. He had as much right to those as anybody else in there. Also, if you go down there each one of the, that building was built on 30-foot sections and we used pre-cast, pre-stressed 30-foot panels. And so in the parking lot you have 30-foot base and in order to maximize our parking we decided to narrow the back and forth area, but make the parking spots bigger. So, you are required to have 9-feet on a 22-foot wide 22-foot wide two-way aisle. You're so, we went to a 20-foot two-way aisle but made each one of the parking spaces 10feet wide because it fit in the 30-foot bay. So if you go there now several of those bays are cut down to 7-feet, 6-inches, 7-feet, 4 inches and 4 cars are jammed into that 40-foot bay. So, I don't know how their counting parking for what they've got here. But, in practice they're not following the parking regulations on there, and I think short-changing Mr. Kasperbauer out of his overflow-parking situation that he would have if it had stayed the way it was.

There's a lot of things I think that have been kind of pushed on Mr. Kasperbauer because he's much a minority interest in the building that even if you say you need 50 percent or you need 75 percent or you need 95 percent, the other owners can supply that and pretty much do anything they want to. So, without these protections of unanimous agreement, he can be basically run over in this whole situation and things can be done that that are, that are very, very damaging to him. Steve has been kind of the common thread through that whole building. He was a young man when he came to me and wanted to start this jet ski business because he wanted to be part of the Japanese market and part of the business that welcomes tourists to Guam. And we were selling jet skis, we were selling windsurfer, we got together we did the beach club; he stayed a minority partner and when the other process with Hibari didn't work out for me we didn't, we didn't have all the sales from Japan that we were kind of promised because the bubble burst in Japan and so Hibari took it over and decided to run it as a hotel. Which was beneficial for Steve. And so, now that they want to go back to a condo there's a lot of adverse effects that that go along with that and I think his needs need to be really looked out for and he doesn't really have anybody but you guys to look out for him in this, in this kind of situation. So, it's really tough being a minority partner in a big money deal like that. I've had that experience, it wasn't pleasant. Thank you very much.

Chairman Arroyo Steve, you have anything to add or ----

Steve Kasperbauer sure. Commissioners, thank you for the opportunity to meet. I was informed of this meeting by reading the newspaper. Lucky I caught it yesterday as I visited up at my mom's house. I've seen the letter that was sent from Attorney Brooks to yourself. I'm wondering why that letter didn't come from Attorney Flynn to yourself. Today, I didn't hear Attorney Flynn represent the Association at all. Once again, we heard Attorney Brooks speak on behalf and Dan Swavely who is last meeting, after I requested the Commissioners to ask him who they work for finally admitted that they didn't work for the Association which was stunning to all of us. As a matter fact in 2012 when this was approved, they weren't working for the Association. So, all the information you collected from them was collected by people representing the personal, private, maybe even self-interest of a single owner. Which is why you have that document of the receivership, which outlines every issue that we have been bringing up at this Commission that has defeated this process of not protecting owners as unanimous which is in the Law. There are actually four Law citings (sic) that we have, and we've already given you the documents as recent that Attorney Todd Thompson had given you.

I'd like to pass these out to you. This is a letter to the Chairman in 2008 and behind it are...is a letter that we have in communication with consultant Dan Swavely as we presented last, last meeting in April where Dan Swavely was actually consulting us on this process. Now, you won't have a chance to go through everything there, but the first letter is going to illustrate all the legal reasons that actually match the (umm), the action by Judge Lamorena that put the Alupang Beach Tower and the Chos' management of Alupang Beach Tower into receivership due to the fact that the majority owner was basically acting in their own interest. As it states even in the receivership, it states how can a majority owner act as the owner, in charge of the Association

and JMSH the corporate management and maintenance for the same facility. In otherwords, it says will they sue themselves for not performing their job. Number two is, Mr. Cho contends that he doesn't have to pay homeowners fees to himself. There is no record of this. In moving forward though what we are going to see is as I, and I submit this as evidence for everyone to read that we have all the statutes, all the Laws that have supported this all the way through even the receivership. We have shown that Dan Swavely was our consultant first to follow the Law.

As Mr. Simpson and Todd Thompson our Attorney mentioned, we are a speck as they mention in the vote; less than two percent, how did two percent manage to survive this far against the 90-plus percent because of the Law and this committee. In 2008, you are going to see the Minutes of the 2008 meeting that aren't in the 2012. In that meeting, and these are attached here, the Commissioners started to ask these questions. By the way, we had our previous Attorney David Mair and I can't find a single statement of David Mair. But in that situation, many people had to sit down and be quiet due to conflicts of work interests that they had with ABC first before they joined Cho okay.

In this discussion, he laid out the law and the rules nothing else. And as a result of it, you're going to see that they talk about these units, these extra units, these six units like on page 12, and so on and so forth. And Attorney Brooks mentions after awhile these are the units they are trying to convert or somehow got passed in 2012. He actually says, we will demolish them. We will not use them anymore. We will conduct no commercial business on them. Because here's the problem everybody. If you have a building on that property and let's say here's the building here for example and then you want to build another building next to. Originally, this part was 100 percent. Now you add this how can you get more than 100 percent? So, are the property owners individual interest rights diminished now because of adding 20 more units or by square footage? In the 2012 meeting which we knew nothing about, your Chief Planner and long time employee of this organizat....of the ... of this Department kept challenging the notion of 400 square feet per unit. We have the original document on that from the government. We were never asked. It's for hotels and motels nothing else. There was inclusions of parking area. And even the park next to...to try and hit that number. But, nobody could land on the number in 2012. But, this case where Dan Swavely was representing us in the past on what was the law, he actually asked you don't think about that. It's time to move forward. You can make the decision. Why don't you just approve this.

Well, I'm telling you today even in this proposal by the Alupang Beach Tower they're claiming there's 257 parking spaces. When this building was built brand new it only had 253 spaces. When they built the restaurant and other units on it it was reduced by another ten spaces. There is no way in the world you will ever get to 257 spaces unless like we did today we walked out there and contrary to the drawings stretched the measuring tape across and 7-foot parking spaces! Now here's the issue. In the last meeting that we came to in April where we found out...I was accused of being greedy. Trying to make money that I made my money on these 138 units. We will tell you we lost money on that project like everybody else. Nobody made

money okay. But we are still there. The original name of this condominium was called the Alupang Beach Club Condominium. Why would Alupang Beach Club Henry and I built a condo, a hotel condo not a condo not a condo hotel over it, well to support our tourism business. And at that time these types of hotel condos like they have Disney, time share, etc. instead of you having to have enough money to buy an entire hotel you can buy one unit in the hotel condo and live there for maybe your weekend or something like and the rest of the time it would be put into a rental pool. That's how they were able to get this special parking variance. It's a little higher than a hotel but it's a lot lower than a condominium. Now, the other reason why we wanted to make it a hotel later on was when they built the new building addition it never had HPR approval! So the addition that you're talking about with the six units and Phase II and everything else, it never had an HPR!

And so when Cho was purchasing these units from Hibari they could not get Title insurance which means I could not get Title insurance! The whole place is...and we have documents in there that will say they fully admit it that they knew they weren't in compliance and that's even listed in the, in the declaration by attorney, I mean Judge Lamorena in there. That they fully admitted they didn't have compliance with HPR. They went for it anyway and the only way they could get Title insurance was to put it to a strict hotel so that they can meet the parking requirements. You understand. But, it was all supposed to be a hotel condo. Now, once they now received Title you have to understand that the 108 units that are considered a hotel are considered 1 block. They are not in way, able ... shape or form to be separated from each other. Well, Mr. Cho wants to separate those and sell them individually. As you can see on Page 19 of this report that they're giving you which is, not the one that I'm giving you, but they replacement HPR actually it's in Page 14 on section 19 there is a lengthy section there. I'd like you to look at this. It's very important. You go to page 14, section 19 of the HPR section you're going to notice something very strange. They're saying ABC who are you don't have any vested interest in there you don't have any say! But when you read this it'll start talking about the interest percentage of owner and as you turn to the second page on 15, it starts talking about a relationship between a majority owner. Why don't they specify that owner by the name of the units that they own at this moment okay. This is very confusing. And this is what ... we spent almost two million dollars on this case between all parties most likely. I know spent a half million that I didn't have. And you go through it it explains how Mr. Cho and any of his successors who own these properties will have to pay commercial unit number two Alupang Beach Towers homeowners' fees forever. Why? Because we have standing as an owner. Because they have violated our rights and in a settlement agreement they have agreed as their way of making up and we're helping them to help them get what they needed we went to this point so they could get go ahead and get Title, but they had to leave it alone. We have in our agreement that we are not supposed to bother each other okay. This is bothering me okay. The fact that his attorneys applied on your official paperwork here as the representative of the association should be outrageous and there should be punishment for that. It's really taken us down the road. 2012 was crime. Alupang Beach Towers association was not here. In April, it was not here. Today, we've had representation this is rubberstamping. Didn't hear a word from the Attorney from Alupang Beach Tower. When you continue to read these now there's an admittance buried in this acceptance of paying our fees forever! We accept the fact that we don't know what the heck they're going to do! Okay! As a matter of fact in 2008 Mr. Cho admits I am not even running a hotel there! In the letter to you it says we don't ever want to do a hotel! Today, it's still zoned for a hotel. How many customers would I receive if it was a hotel. At least ten or fifteen that was my average. How many do I receive today?! Zero. For the last fourteen years, I've lost fifteen customers a day or twelve years times sixty or seventy dollars it's millions of dollars. And that's why I'm there I have to run a business! That's why he's there. You're favoring a business for the wrong reasons over a business that has done all right. Okay.

So first of all, the Law says if you hurt the value of my property you can't do this. I've already been injured! I haven't sued them yet. This is a violation of our settlement agreement. This is a violation of the Law! But if we move forward from here this is a violation of the HPR. Secondly, they are calling this an amendment to a replacement! Changing a condominium to a hotel was a replacement. Changing a hotel back to a condominium an adding twenty more is not an amendment! We've already established that through a million dollars worth of legal fees because that's what they wanted to do a first time and it didn't work. Please, do not burden not only us, but as you were mentioning in 2012, the precedence that will set across the island. You are an administrative law body in a sense. It gets taken care of here before it goes to Court. And we are counting on you the owners that couldn't make it probably didn't know about it! Now there are other things in these HPR rules that they've adjusted that just aren't right! Nobody has signed off on all of these rules. All they said that there was a meeting and they approved this. There was no going over this document in great detail. There hasn't been any Minutes of this. And as a matter of fact, I have to say that I am really shocked that I'm last ... I'm also an adjacent property owner. I own the property adjacent next to Alupang Beach Tower. By of which because of this condo situation that they're selling as a matter of fact if you drive by I have pictures long-term lease it's plastered on front of the building.

We have statements ... today in a letter to you from yesterday and everything is we stopped running a hotel in defiance of the HPR. And my parking lot is full all the time because when they have all these people come in and rent a condo, not like a hotel, three people with three girlfriends, and six cars, you can't fit the cars there! Now when they talk about me parking inside Alupang Beach Tower we have eleven spaces. But, the customers have spaces. The commercial units have spaces and the visitors have spaces. This process that they're looking at there's not a space for anybody! They're actually fabricating spaces of parking that never even existed when it had maximum ground space and today that has been removed because of the actual construction, illegal construction in the beginning of Phase II.

And I'm going to ask you please, I'd like to say that what I've given to you today is a submittal and I'm asking you to re-read the 2008 Minutes where after our attorney had spoken, which is not in the record for some reason, all of a sudden Mr. Brooks is saying we will stop, we will demolish, we'll.....okay, how about storage we won't don't anything we'll never use it for commercial use ever! Ever! And 2012 we never knew they were here because they simply came to you, not as the Association, but as owners ... majority owner representative clearly the

same definition that happened when they were put into receivership which could probably happen today.

Today I'm going to mention, I still don't have my fire system properly working at Alupang Beach Club commercial unit two because the majority owner refuses to pay Phoenix Fire Alarm System to get it connected to the main panel. I tried to put in my own panel, and it was rejected by Fire Department because they said you can't be separate from the unit. We have tried and tried over a year and we don't have our fire system in place. These are just the abuses we suffer on a daily basis. I have not been litigious against them. I don't like it. I have everything in our power, I believe to succeed just as well as we did in our settlement agreement. We never paid a penny to anybody. But trust me, they had to at least catch up for our legal fees which was in the hundreds of thousands of dollars. Please don't put me in that position. I just want quiet enjoyment and that's why the law talks about unanimous; if you guys own something in a building, and you agreed on it through this process and somebody came along and had fifty plus one percent and changed everything, you live in a condo, Dan Swavely develops condos, what in the world would you do if somehow somebody got a hold of fifty-one percent and started making a zoo out of it?! No, that's why there's a public hearing process. This also has not also gone to the neighbors. It hasn't gone to the Mayor's Office and the community.

And so please I ask you to consider this strongly. And what I heard earlier, you were just waiting for them to respond to they were saying they already thought they were done. I don't even know what's been going on! There is no report back to us. So, thank you for allowing me to give this testimony.

Chairman Arroyo thank you for your comments and we will take that into consideration. There is a long history with respect to this particular project. And I don't believe that in the Minutes that I've read that the Commission has had the benefit of guidance from Legal Counsel in this discussion. I'm wondering Kristan if you could take a look at what's been presented today and go back over the history and provide us with some information up to what the realm of our authority is. There sounds like there are some illegal issues that probably have to be resolved outside of the Commission. But, if you could provide us with some guidance up to our authority we would greatly appreciate that.

Thanks folks.

Back to the agenda ---

V. Administrative and Miscellaneous Matters

<u>Chairman Arroyo</u> Cris, you wanted me to remind you about the November/December agendas.

<u>Cristina Gutierrez</u> on November 24th which is our second meeting it's Thanksgiving, and as stated by regulations, if a meeting falls on a legal holiday it can be held on the Tuesday

following the holiday. I just need to know if you would like to do that if we have applications for the November 24th agenda. And then the following meeting which is two weeks later, December 8th which is also holiday. I just need to confirm if you would like to hold a conduct a meeting on November 29th.

Chairman Arroyo what does the calendar look like for the next meeting.

[Discussion ensues on meeting dates for November/December]

<u>Chairman Arroyo</u> and hopefully by November we'll have the other two Commissioners confirmed.

Michael Borja I'm not exactly sure; I don't think it's going to be put on the October agenda.

Vice Chairman Cruz there's no session in October.

<u>Michael Borja</u> what Senator Ada would like to do is to have from what he told me is he would like the vote on the nominees be taken after the votes on the composition of Commission members is done so that he can determine whether the Board composition is going to be adjusted in numbers. So that he does not confirm a sixth person when he will reduce it down to five.

<u>Chairman Arroyo</u> okay. And I know that everybody plans on the holidays and travel and stuff like that. So, if you could just keep Cris abreast of when you're leaving just in case we need to make some adjustment to the schedule.

Kristan Finney do you want an update on the case.

Chairman Arroyo yes please.

Kristan Finney just real briefly. We did have a hearing last week or a couple of weeks ago. Anyway, we recently had a hearing and so the next hearing is going to be on November 22nd. The hearing that we had was just a status and they wanted to check on the status of the agency record so because we have to provide it to them in an electronic form. We're still working on getting that complete. I'm hoping it will be done ... I told the Court that we probably needed another couple of weeks. So, hopefully we will have that done soon.

Chairman Arroyo anything else?

<u>Marvin Aguilar</u> we have the Koror Planning Commission coming in about two weeks. I'll be holding their hands for three out of the five days they're going to be here. It's an excellent opportunity for them to come in and watch the GLUC in action. I've got a good presentation for them and take them to various sites. I will be sending out the agenda and opening up the

<u>Marvin Aguilar</u> invitation to anybody who would like to participate. Also, there's a planned assembly of Planners, the second symposium. They are shooting for November 1st; we haven't received anything from the Bureau of Statistics and Plans at this time, but they'll be shooting for that and there's also an open invitation to the Commissioners to attend that. There are also various, several zone change requests going through the Legislature right now. And I know that the Secretary is emailing it to everyone. If you have any comments or concerns that would really help me out.

Michael Boria just real quick. The zone change for the school zone in the middle of the Radio Barrigada returned land area was made into public law and so there's an S-1 zoning up there. But, we have a bio-diversity conservation easement description put into a piece of land that they wanted to create except there is no such definition. There's no definition for bio-diversity conservation easement. I'd like there to be one. There exists that kind of concept nationally and in a lot of different communities it's allowable for private and public lands to fall under that provision. But, what we're looking to do is to protect certain lands and keep them green pretty much. There is a land zone change request that just got introduced and it's for a 22-acre parcel of land inside the gate of Tiyan, it's adjacent to Route 8 directly across from the Barrigada Post Office. It is also returned lands that was bought from the original owners and they want to take it from agriculture to M-1, and that legislation there's no date for that. But, we have done the process for the land zone consideration report and the Barrigada Mayor has already been informed about as well. The land is owned by Jim Atkins.

Chairman Arroyo anything else?

<u>Commissioner Oh</u> yeah, just a quick question. I think I saw an article on a Tamuning lot they're trying to convert it to some type of shrine.

Michael Borja right; two recent bills have been introduced to take 8-acres, about 8-acres each to dedicate 8-acres for a shrine and cemetery on Oka Point along the ridge, the cliffline of Oka Point. And the other 8-acres was to permanently reclassify another 8-acres where is Sagan Katuron (sp?) culture park is at into a cultural center and to assign it with the perpetual granting to the existing organization that is non-profit that is using it. In my testimony, I pointed out the fact that of those 8-acres that they have, they have a current license agreement with CLTC. They're only using 5 and the non-profit organization had failed to do their annual reports with Rev Tax from 2007 to 2014, and they did do it in 2015 collectively; but they are still delinquent on 2015 and 2016. The organization may have some issues right now with its membership and its status as a non-profit. As far as the other land for this shrine and cemetery, I mean it goes back to an old public law that basically says look we've got a lot of bones that have been dug up over the years throughout the island. They need to be reinterred, and so find a place. And 20 years later they go, oh well here's this old report that says we need to do this and we want to do it in our most beautiful place, our Chamorro Land Trust most expensive piece of property which is Oka Point. We are trying to find an alternate site. We've proposed a couple of alternate site further on down or use the extra three acres of land that the cultural center is not using or put them in the forest that we wanted to convert 35-acres to a bio-diversity conservation. It hasn't been resolved and I don't think it will be. But, it was really crazy and they even put a provision in there for this cultural center; it says termination no provision to be included.

[Discussion ensues on the interment of remains]

Chairman Arroyo anything else? [None noted] Okay, so I'll entertain a motion to adjourn.

VI. Adjournment

Vice Chairman Cruz motion to adjourn.

Commissioner Oh second.

<u>Chairman Arroyo</u> motion by Vice Chair, second by Commissioner Oh. All in favor of adjournment say "aye" [Chairman Arroyo, Vice Chairman Cruz, Commissioners Oh and Bathan]

The regular meeting of the Guam Land Use Commission for Thursday, October 13, 2016 was adjourned at 4:00 p.m.

Approved by:

John Z. Arroyo, Chairman Guam Land Use Commission

Date approved: Md 37, 2016

Transcribed by:

M. Cristina Gutierrez, Pro Tem

DLM, Planning Division

mogution-

GUAM LAND USE COMMISSION



Chairman John Z, Arroyo Vice Chairman Victor F, Cruz Commissioner Conchita D. Bathan

Commissioner Tae S. Oh

Michael J.B. Borja, Executive Secretary Kristan Finney, Assistant Attorney General

AGENDA

Regular Meeting

Thursday, October 13, 2016 at 1:30 p.m.

Department of Land Management Conference Room
590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning
[As advertised in the Guam Daily Post on October 6th AND October 11th, 2016]

I. Notation of Attendance	[] Quorum	[] No Quorum
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- II. Approval of Minutes
 - GLUC Regular Meeting of Thursday, September 8, 2016
- III. New Business

Zone Change

- B. The Applicant, Immanuel W.S. Choi represented by Ignacio F. Santos; request for a zone change from "A" (Rural) to "M-1" (Light Industrial) zone for the expansion of an existing auto repair shop, on Lot 5223-6-NEW-6-R1-NEW-,1 in the Municipality of Barrigada, under Application No. 2013-20.

 Case Planner: Celine Aguilar
- C. The Applicant, Sunny Plastic Guam, Inc. represented by Harry D. Gutierrez; request for a zone change from "R-2" (Multi Family Dwelling) to "M-1" (Light Industrial) zone, for compliance of an existing warehouse, on Lot 5027-5-R1, in the Municipality of Tamuning, under Application No. 2016-12. Case Planner: Penmer Gulac

IV. Old or Unfinished Business

Horizontal Property Regime

A. The Applicant, Alupang Beach Tower; requests issuance of its Supplementary Final Public Report for Alupang Beach Tower Condominiums, on Lot #2015-1-REM-NEW-2 and Lot 131-REV-Unit 1, in the Municipality of Tamuning, in a "C" (Commercial) zone, HPR No. 92, under Application No. 1992-39C. [Continuation from GLUC hearing of April 14, 2016.]

Case Planner: Celine Cruz

- V. Administrative and Miscellaneous Matters
- VI. Adjournment

ATTACHMENT A



DIPÅTTAMENTON MINANEHAN TÅNO' (Department of Land Management) GUBETNAMENTON GUÄHAN (Government of Guam)



EDDIE BAZA CALVO

MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

Governor

RAY TENORIO Lieutenant Governor

October 10, 2016

Memorandum

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

Commission Brief - Application No. 1992-39C Request for Issuance of SUBJECT:

Supplementary Final Public Report

RE: Continuance of GLUC meeting of April 14, 2016

1. PURPOSE:

Application Summary: Alupang Beach Tower (ABT) Home Owner's Association, request a First Supplementary Final Public Report for "Alupang Beach Tower", on Lot 2015-1-REM-NEW-2 and Lot 131 Rev, Unit 1, in the Municipality of Tamuning, in an "C" (Commercial) zone, HPR Registration No. 092, under application No. 1992-39C, pursuant to §45101 to §45155, Chapter 45, Horizontal Property Regime Act.

2. BACKGROUND:

At its regular meeting of April 14, 2016 the Chairman of the Guam Land Use Commission ordered the continuation of this application. This was due to commissioners stating that they were not ready to make a decision in light of information presented during the course of the meeting by Mr. Steven Kasperbaurer and his attorney, Mr. Todd Thompson. Additionally, it was noted that there was no representation of the Homeowners Association at the meeting.

3. DISCUSSION:

The applicant, after submitting Minutes of the Special Meeting held by the Alupang Beach Towers Owners Association, as well as a preparing a response to the objection letter presented by Attorney R. Todd Thompson to the GLUC at its last review, is requesting the issuance of Supplementary Final Public Report for Alupang Beach Towers.

Provided in the applicant's submittal are the following:

- 1. The First Amendment to the Replacement Declaration of Horizontal Property Regime of the Alupang Beach Tower with exhibits
- 2. Letter to the Chairman dated September 26, 2016

Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

> Mailing Address: P.O. Box 2950 Hagátňa, GU 96932

Website: http://dlm.guam.gov

E-mail Address: dlmdir@land.guam.gov

Telephone: 671-649-LAND (5263)

> Facsimile: 671-649-5383



Continuation of Commission Brief - Application No. 1992-39C Alupang Beach Tower October 5, 2016
Page 2 of 2

- Minutes of the Alupang Beach Towers Owners Association Special Meeting on August 11, 2016
- 4. A copy of the Notice to All Owners, Alupang Beach Towers

Included as reference materials from the GLUC meeting of April 14th is the letter from Attorney R. Todd Thompson who represents Alupang Beach Club, Inc., a commercial space tenant of ABT.

The submitted documents from the applicant were in response to the discussion that took place at the GLUC meeting of April 14, 2016. The applicant has requested to provide for the commission a presentation of the history of the project in support of issuance of the First Supplementary Final Public Report.

Having conducted a meeting of the Owners Association, and providing proof of meeting notice requirements under the By-Laws of the Alupang Beach Tower Owners Association, the applicant feels that all material facts are submitted to support issuance of a supplementary final public report. However, concerns have been raised regarding the validity of such actions taken in the meeting to approve the First Amendment to the Replacement Declaration of HPR and request the issuance of a Supplementary Final Public Report since the applicant has not presented proof pursuant to §45108 that the work will not jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement of hereditament.

Noted is the legal representation of the Alupang Beach Tower Owners Association by the law office of Yanza Flynn Timblin, LLP.

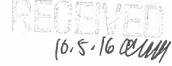
4. **RECOMMENDATION:** Planning staff recommend the application be tabled until certification is provided to prove adherence to §451081.

Marvin Q. Aguilar Chief Planner

Case Planner: Celine Cruz

*TTACHMENTS

^{§ 45108.} Certain Work Prohibited. No apartment owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the unanimous consent of all the other apartment owners being first obtained; provided, that additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the Board of Directors of the association of apartment owners and such percentage, number, or group of apartment owners as may be required by the declaration or bylaws.



ALUPANG BEACH TOWER OWNERS ASSOCIATION

999 S Marine Corps Dr Tamuning, Guam 96913

NOTICE OF SPECIAL MEETING OF THE OWNERS

To: All Owners, Alupang Beach Tower

Dear Owner,

Pursuant to a call for a Special Meeting by Hee K. Cho, the President of the Alupang Beach Tower Owners Association, and in accordance with Article I, Sections 4 and 5, of the Amended By-Laws of the Alupang Beach Tower Owners Association (the "Association"), you are hereby provided notice of a Special Meeting of the owners of Alugang Beach Tower to be held on August 11, 2016, at 2:00 p.m., at old Esmeralda Alupang Beach Tower, 999 S. Marine Corps Drive, Tarriuning, Guam. The purpose of the meeting is to: (a) approve the First Amendment to the Replacement Declaration of Horizontal Property Regime proposed for Alupang Beach Tower; (b) approve the resubmission of the Associationapproved First Amendment to the Replacement Declaration of Horizontal Property Regime to the GLUC for the purpose of seeking GLUC's re-approval and for the timely filing of a Supplementary Final Public Report; and, (c) to transact such other business as may properly come before the meeting.

Sincerely,

MIN S. CHO, Secretary

HEE K. CHO, President

SUPPLEMENT

TO

First Amendment To the

REPLACEMENT

Declaration of

Horizontal Property Regime of the

ALUPANG BEACH TOWER

September 30, 2016

- 1. Letter to Chairman dated September 26, 2016
- 2. Alupang Beach Towers Owners Association Special Meeting on August 11, 2016

Brooks Concepcion Law, P.C.

247 Martyr Street, Ste. 101 Hagatna, Guam 96910-5190

Terrence M. Brooks, Esq. Georgette Bello Concepcion, Esq.

September 26, 2016

Telephone: (671) 472-6848 Facsimile: (671) 477-5790 Email: mail@guamlaw.net

Mr. John Z. Arroyo, Chairman Guam Land Use Commission Department of Land Management Government of Guam ITC Building, Suite 703 590 S. Marine Corps Drive Tamuning, Guam 96913

SUBJECT: Alupang Beach Tower (ABT)

Dear Chairman Arroyo:

This office represents Mr. Hee K. Cho and Min S. Cho. Attorney R. Todd Thompson wrote to you in April objecting to the application before the GLUC requesting a Supplementary Final Public Report for the ABT. This letter is sent to point out the many mistakes contained in Mr. Thompson's letter.

Mr. Thompson begins by bringing up a court suit that has little or nothing to do with this pending action. The suit, as he points out, was directed mainly at Hibari Guam Corp., which was trying to sell its interest in ABT to the Chos. That suit was settled and Mr. Steve Kasperbauer, the president of Alupang Beach Club, Inc., appeared before the GLUC to withdraw his objections to the sale and support it.

It should also be noted that Mr. Kasperbauer and Mr. Henry Simpson, both of whom objected to this request at the last GLUC hearing where it came up, were originally developers of ABT. When ABT was constructed the 108 units that the Chos' seek to revert to condos were actually condos. The objectors are objecting to the Chos' doing something that they did when they were involved in the development of ABT.

With respect to the specific objections that begin on page 4 of Mr. Thompson's letter, we note the following:

1. The changes requested were approved at an ABT homeowners meeting. Minutes of the meeting were provided in the application. To address concerns at the last

Mr. John Z. Arroyo, Chairman Guam Land Use Commission SUBJECT: Alupang Beach Tower (ABT) September 26, 2016 Page 2 of 3

meeting, the ABT homeowner's association met again and again approved the plan. Copies of those minutes have been provided to the GLUC. The assertion that adjacent property owners must be notified is false. The Chos' are not seeking a variance, like Mr. Kasperbauer and Simpson did. No external or structural changes are being made to ABT.

- 2. The claim that 100% assent by all unit owners is necessary is also false. ABC's common interest in the property is not being altered. It will still have the same common interest after the Supplementary Public Report is issued as it had before. All of its easements and limited common elements will be untouched. ABC will be basically unaffected by the changes being sought by the Chos'. No "substantial alteration" will be made to the condominium. The basic change is that 108 hotel rooms that are now considered to be one Unit will be 108 separate condominium Units.
- 3. The adverse parking impact is also bogus. ABC will still have the same number of parking spaces that it has had since ABT has opened. There are sufficient parking spaces for all of the units.
- 4. The density concerns were addressed and dismissed. The GLUC fully and fairly considered this important issue and found that the application was within the regulations imposed by law. Again, Mr. Kasperbauer participated in the original development of ABT. Is he now saying that he violated density requirements when it was built?
- 5. Now, we are getting to the heart of Mr. Kasperbauer's objections. Apparently he believes that ABT should be operated in a manner that is best for him and to the disadvantage of the other 97% of owners. As he noted in Mr. Thompson' letter, ABT has been operated as long term rentals for many years, at least since 2012. Whether the application is allowed or not, the Chos' are not going back to operating ABT as a hotel. This point is moot either way.
- 6. The letter's final point is also completely without merit. Mr. Thompson claims that ABT has undergone "various constructions of additional buildings." Mr. Thompson is apparently unaware that the Chos' have made no changes to the structure of the building or added facilities to the building since they acquired ABT.

Mr. John Z. Arroyo, Chairman Guam Land Use Commission SUBJECT: Alupang Beach Tower (ABT) September 26, 2016 Page 3 of 3

We have prepared a power point presentation that will be shown at the next hearing where this matter comes up. However, we also wanted to present a written reply to the specious arguments contained in Mr. Thompson's letter.

Sincerely,

Terrence M. Brooks For

Alupang Beach Towers Owners Association Special Meeting on August 11, 2016 Meeting Minutes

Pursuant to the Notice of Special Meeting of the Owners (the "Notice"), attached hereto, a special meeting of the owners of the Alupang Beach Tower (the "Owners") was held on the ground floor of the Alupang Beach Towers, on August 11, 2016 at 2:00 p.m..

Present at the special meeting were the following owners: Hee K. Cho, in his individually capacity and as proxy for Jae Cho; Min Cho and Darren Crisfield. Hee K. Cho and Min Cho, with the proxies, represented approximately 93% of the ownership of units at Alupang Beach Tower. Also present at the special meeting were the following individuals: Michael D. Flynn. Jr., legal counsel for the Alupang Beach Tower Owners Association; Terrence M. Brooks, legal counsel for Hee K. Cho; Darren Crisfield, Owner Unit 501; Randall Todd Thompson, attorney and proxy for Steven Kasperbauer owner of Alupang Beach Club, tenant of CU1; and, Daniel D. Swavely, consultant for Hee K. Cho.

The special meeting was called to order at 2:05 p.m. and presided over by Attorney Terrence M. Brooks on behalf of President Hee K. Cho.

Proof of Notice to Owners, pursuant to Sections 4 and 5 of the Amended By Laws of the Alupang Beach Tower Owners Association (the "Association"), as Amended July 11, 2012 (the "ByLaws"), was presented to Attorney Brooks.

Attorney Brooks stated that the special meeting was called to:

- (a) approve the Replacement Horizontal Property Regime proposed for Alupang Beach Tower; and
- (b) transact such other business as may properly come before the meeting.

On behalf of Hee K. Cho. Attorney Brooks explained that the First Amendment to the Replacement Declaration of Horizontal Property Regime was previously approved by the ABT HOA and the Guam Land Use Commission ("GLUC"). in accordance with the GLUC's Notice of Action, dated July 16, 2012, recorded as Document Number 840122, on August 08, 2012. However, the Final Public Report was not timely filed, so the GLUC approval expired. At the GLUC hearing on April 13, 2016, the Commission directed that further action would be postponed until the Association convened for purposes of again addressing the Replacement Horizontal Property and approved seeking a First Supplementary Final Public Report.

Mr. Brooks addressed to Mr. Swavely six issues raised by R. Todd Thompson. Attorney for Steve Kasperbauer (owner of CU1) in Attorney Thompson's April 13, 2016 letter to the GLUC. Mr. Swavely responded to the questions as follows:

Question #1 - Does the Replacement Declaration seek amendment to the Condominium Project's site plan?

Answer-NO.

Question #2 - Does the Replacement Declaration reduce the value of the property?

Answer - NO.

Question #3 - Does the Replacement Declaration add any material structure to the property?

Answer - NO.

Question #4 - Does the Replacement Declaration alter the common interest appurtenant to any apartment, as expressed in the Declaration?

Answer - NO.

Question #5 - Does the Replacement Declaration reduce the size or square footage of the existing residential units?

Answer - NO.

Question #6 - Does the Replacement Declaration provide for adequate parking?

Answer - YES.

A motion was made by Hee K. Cho, and seconded by Darren Crisfield, to again approve the First Amendment to the Replacement Declaration of Horizontal Property Regime and request from the GLUC a First Supplementary Final Public Report. Mr Thompson reiterated the objections posed in his letter to the GLUC. A vote was taken by the Owners, and the motion carried with more than 93% voting in favor and one vote against coming from Mr. Kasperbauer's proxy, Mr. Thompson.

A motion was made by Hee K. Cho, and seconded by Darren Crisfield, to resubmit the Association-approved First Amendment to the Replacement Declaration of Horizontal Property Regime to the GLUC for the purpose of seeking GLUC's re-approval and for the timely filing of a Supplementary Final Public Report. Mr. Thompson's objections were noted. A vote was taken by the Owners, and the motion carried with more than 93% for and one vote against coming from Mr. Kasperbauer's proxy, Mr. Thompson.

No further business came before the Owners at the special meeting.

A motion was made by Hee K. Cho and seconded by Darren Crisfield to conclude the special meeting. There was no discussion on the motion. A vote was taken by the Owners and the motion was unanimously carried.

The special meeting concluded at 2:20 p.m.

A TRUE COPY:

ATTEST:

Terrence M. Brooks Presider

Min S. Cho. Secretary

All action taken is hereby consented to, ratified and confirmed.

IN WITNESS WHEREOF, the Owners hereto have subscribed their names effective as of the day and year first above written.

OWNERS:

HERK-CHO



ATTACHMENT B



DIPĂTTAMENTON MINANEHAN TĂNO' (Department of Land Management) GUBETNAMENTON GUÄHAN (Government of Guam)



MICHAEL J.B. BORJA Director

Deputy Director

DAVID V. CAMACHO

EDDIE BAZA CALVO Governor

BAY TENORIO Lieutenant Governor

October 5, 2016

MEMORANDUM

To:

Chairman, Guam Land Use Commission

From:

Guam Chief Planner

Subject:

Staff Report - Zone Change Application No. 2013-20, Lot 5223-6-NEW-6-

R1NEW-1, Barrigada

1. **PURPOSE:**

- Application Summary: The applicant, Immanuel W.S. Choi, represented by Mr. Igancio Santos is requesting approval for a Zone Change of Lot 5223-6-NEW-6-R1NEW-1, Municipality of Barrigada, from "A" (Rural) to "M-1" (Light Industrial) Zone for expansion of an existing auto repair shop.
- Legal Authority: Sections 61630 to 61638 of Chapter 61 (Zoning Law), Title 21, GCA (Real Property)

2. **FACTS:**

g.

- Location: The subject lot is located between a 40-foot unnamed public a. access street to the north and a 50-foot public access street to the south known as Juan G. Fejeran Street.
- b. Lot Area: 5,271 Square Meters or 50,633 Square Feet.
- C. Present Zoning: "A" (Rural) Zone
- d. Field Description: Occupying the property is a 9,300 square foot building which is being used to house an auto repair shop and a safety inspection center. Overgrown vegetation and trees occupy the eastern side of the building with scattered damaged vehicles throughout the property.
- Masterplan: Undesignated e.
- f. Community Design Plan: Conservation/Open-Space
 - Previous Commission Action: Prior to the consolidation and resubdivision of Lots 5223-6NEW-1, 5223-6NEW-R1, and 5223-6NEW-7-1,

Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

Mailing Address: P.O. Box 2950 Hagátña, GU 96932

Website: http://dlm.guam.gov

E-mail Address: dlmdir@land.guam.gov

Telephone: 671-649-LAND (5263)



Facsimile: 671-649-5383



Continuation of Memorandum

RE: Staff Report - Application No. 2013-20 - Zone Change
Lot 5223-6-NEW-6-R1NEW-1, Municipality of Barrigada

GLUC Meeting of October 13, 2016

October 5, 2016

Page 2 of 3

into Lots 5223-6-NEW-6-R1NEW-1 and 5223-6-NEW-6-R1NEW-R1, the Territorial Planning Commission on December 28, 1989, approved with conditions a Zone Variance to allow an auto body shop in an A zone on Lot 5223-6NEW-1.

3. APPLICATION CHRONOLOGICAL FACTS:

- a. Date Application Accepted: November 4, 2010
- b. Date Heard by ARC: November 18, 2010
- c. Public Hearing Results: On February 6, 2016, a Public Hearing was conducted at the Barrigada Community Center. Present were DLM Planning Division staff, the applicant's representative, the Barrigada Mayor and Vice Mayor, two members of the Municipal Planning Council, and one concerned citizen.

Mr. Ike Santos presented the application to those in attendance as an expansion to the existing auto body shop currently on the property. After a few questions regarding drainage and access to the property, there were no other concerns and the hearing concluded shortly after.

Submitted for the record is a letter from the Office of the Mayor and Vice Mayor with suggested recommendations should the zone change be approved.

(See Attachment 1 - Barrigada Mayor and Vice Mayor's Comments) (See Attachment 2 - Public Hearing Results)

4. STAFF ANALYSIS: As proposed by this application, the request is to change the existing designated "A" (Agricultural/Rural) zone of the subject lot to "M-1" (Light Industrial) in order to allow expansion of the existing auto repair shop. The proposed development is to meet the minimum requirements for setbacks, height, parking, on site storm water retention, and landscaping. Additionally, the expanded auto body shop will allow for the storage of vehicles indoors as compared to be stored in the open.

As to Public Necessity, Convenience and General Welfare, justification is provided for in the application as the proposed (expansion) development is designed to cater towards the military activities requiring a need for auto repair services. It affords convenience through the availability of this type of service within the area of a major thoroughfare, Route 16. Additionally, the surrounding higher intensity land uses restrict the property from its full potential as zoned.

Continuation of Memorandum

RE: Staff Report - Application No. 2013-20 - Zone Change

Lot 5223-6-NEW-6-R1NEW-1, Municipality of Barrigada

GLUC Meeting of October 13, 2016

October 5, 2016 Page 3 of 3

The development trend shows growth from rural residential to commercial/light industrial uses within the area, and future commercial/light industrial growth is foreseeable as this property lies less than 500 feet inland from Route 16. This and the existence of adequate infrastructure will accommodate and serve the growth of this area.

Another land use element considered in our analysis is the impact of the AICUZ (Air Installation Compatible Use Zone) generated by aircraft activities utilizing the Guam International Air Terminal. Based on the existing AICUZ, the subject property falls within an area designated as Accident Potential Zone 1 (APZ I) and Ldn (noise level) of 65-70 decibels. Any type of activity within the surrounding area will be affected by noise levels not conducive to residential use within this area but can be addressed through appropriate soundproofing. The AICUZ requirements do not favor residential development within the area as opposed to commercial/industrial, agricultural, golf courses or open space. As such, it is the position of Planning Staff that the area is best suited for industrial type uses followed by commercial activities/uses.

Since the lot is presently zoned "A", the required "Agricultural Impact Statement" indicated no major impacts to any agricultural activity and to any environmental issues regarding endangered species and habitat. We have reviewed the submitted ARC positions and find that there are "No Objections with conditions" for the zone change. We find within the context of the application, justification that the public necessity, convenience and general welfare, adequately supports a positive action on the zone change request.

5. RECOMMENDATION: Based on the above, Planning Staff recommends **Approval** with the following condition:

That the applicant adheres to the ARC conditions as stipulated on their Position Statements.

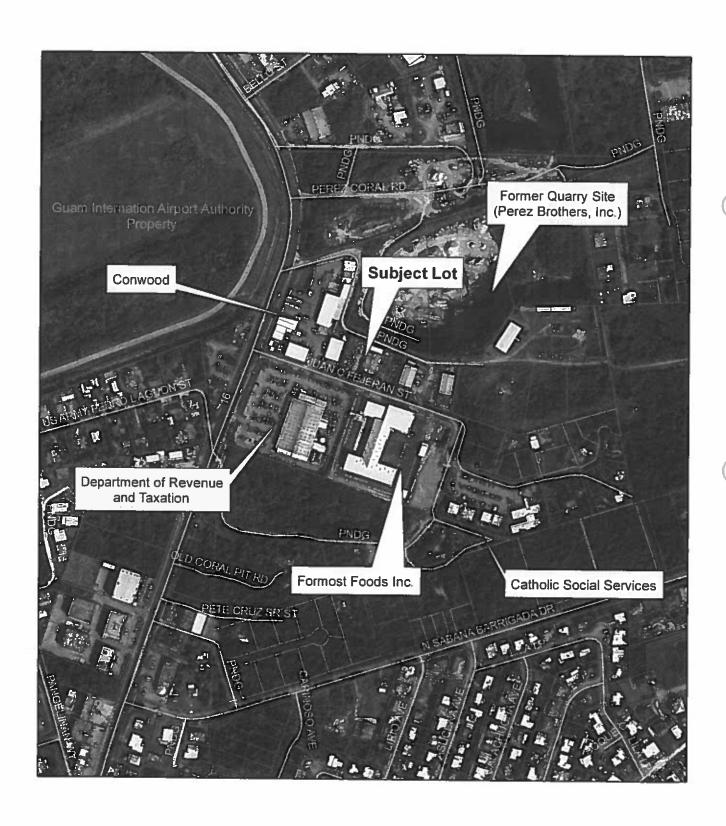
Marvin Q. Aguilar

Attachments: 1. Location Map

2. Public Hearing Results

3. Barrigada Mayor and Vice Mayor's comments

Lot 5223-6-NEW-6-R1NEW-1, Barrigada



PUBLIC HEARING RESULTS Zone Change Application No. 2013-20

Lot 5223-6NEW-6-R1NEW-1, Barrigada

February 6, 2014

Meeting was called to order at 6:09 PM.

Question (Francisco Benavente): Concerned about water runoff. Overflow of water onto highway brings debris that government has to pay to clean and fix. What is the applicant planning to do for flood control?

Response: The applicant proposes to install a French Drain system. By looking at the quarry site which is next door to this project, you can tell the soil composition. The area has good percolation since there is a very thin top soil layer and underneath is limestone.

Question (Francisco Benavente): We still have issues because there is a lot of concrete surfaces and no room for the water to seep through. Is the applicant going to have more concrete surfaces? **Response:** A French Drain will be installed at an angle to catch rainwater but also allow the natural flow of water.

**Mayor Blas submitted written comments for the record.

Question (Mayor Blas): Which side does the owner intend to use to access his property? We are concerned about the traffic congestion that this will cause if they are allowed to expand.

Response: The un-named road which could also provide access is not paved and the owner currently uses the paved access. I am currently working with property owners further in along the un-paved road to have them share the cost of paving and bringing utilities in (sewer line).

**(No further discussion regarding the proposed Zone Change application, all other inquiries were directed to DLM Planning Staff on behalf of the Barrigada Planning Council)

Meeting was adjourned at 6:57 PM.



Office of the Mayor & Vice Mayor 124 Luayao Lane, Barrigada, Guam 96913

February 6, 2014

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Mr. Lawrence S. Rivera Chairperson Guam Land Use Commission Tamuning, Guam 96931

Ret

Application No. 2013-20: Zone Change: Immanuel WS Choi, Lot No. 5223-6NEW-6-R1NEW-1, Barrigada, from "A" Agricultural Zone to "M-1" Limited Industrial Zone.

Dear Mr. Chairman:

Buenas yan Hafa Adai! For the record my name is June U. Blas, with me is Jessie P. Bautista, Vice Mayor and members of the Barrigada Municipal Planning Council. We are here to provide comments on Application No. 2013-20: Zone Change: Lot No. 5223-6NEW-6-R1NEW-1, Barrigada, from "A" Agricultural Zone to "M-1" Limited Industrial Zone.

The proposal is to expand the existing facility to accommodate an additional 7,000 square feet of space. Secondly, the on site improvement will consists of an auto repair shop, vehicle inspection facility and a 65 parking stalls with four (4) accessible stalls.

Although the DPW has inspected the location area (April 25, 2013) and has no objections, as a resident of the area I have a few suggested recommendations:

- Based on GPA's preliminary inspection of the site, electrical facilities may require upgrading to meet the demand of the proposed project. This is evidenced by the fact that GPA has certified that the required government services, facilities and infrastructure although available and in place, they are not adequate to support the project.
- Government services facilities and infrastructure currently services the area, including but not limited to: power lines, poles and facilities; water pump lines, pumps and facilities; sewer and liquid waste disposal; storm water disposal; solid waste disposal; telephone lines and facilities.
- The applicant and not the government, will be responsible for the costs of any required system upgrade.
- Because the subject property is located above Guam's northern water lens, we are concerned with the oil, petroleum and lubricants that may be stored or used on site. We are also concerned with the potential that these fluids may accidentally make their way to the ground.

Mr Lawrence S. Rivera
Chairperson, Guam Land Use Commission
February 6, 2014
Re. Application No. 2013-20. Zone Change. Immanuel WS Choi, Lot No. 5223-6NEW-6-R1NEW-1, Barrigada, from "A" Agricultural Zone to "M-1" Limited Industrial Zone
Page 2.

- We ask that the applicant take steps to ensure that a Pollution Protection Plan be submitted and received by the Guam Environmental Protection Agency for approval.
- Once the rezone request is approved, the applicant should take appropriate
 measures to ensure that the property will be landscaped in such a way as to reduce
 storm water runoff, while at the same time provide a buffer between his property
 and the neighborhood.

Mr. Chairman, band aid solutions does not work here in Barrigada. We have learned from our past experiences.

During the recent months we have received more than 10.2 inches of rain followed by 8.21 inches the next day. In Barrigada, rain prompted flash flood warnings, a number of roads became impassable and families living in low-lying areas were forced, by the Mayor and Vice Mayor) to evacuate their homes. Winds blew down vegetation, blocking roads and causing power outages.

Portions of the Roadways along Route 8, 10 and 16 were collecting water making passage at times impassable. DPW and the Federal highway personnel should take a second look at construction of the median fronting the John Gerber U.S. Post Office. Instead of draining, water was collecting towards the center of the roadway island thereby causing some vehicles to stall, and block traffic.

Thank you for allowing us the opportunity to provide our comments.

Sinseramente,

Mayor

JESSIE P. BAUTISTA
Vice Mayor

PUBLIC NOTICE

AN APPLICATION HAS BEEN FILED WITH THE GUAM LAND USE COMMISION (GLUC) FOR A ZONE CHANGE

TON DESCRIPTION: Zone Change to expand coasting facilities

mmanuel W.S. Choi

ER: Immanuel W.S. Choi c/o Ignacio F. Santos

TK, TRACT, MUNICIPALITY: 5223-6-NEW-6-R1 NEW-1, Barrigada

D CHANGE OF ZONE: "A" (Rund) to "M-1" (Light industrial)

DATE EARING 02-06-14

10-13-16

STENG:

TE THE

Barrigada Mayors Office PLACE

DML @ ITC BLOSSE For

Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

> Mailing Address: P.O. Box 2950 Hagatña, GU 96932

Website: http://dim.guam.gov

E-mail Address: dlmdir@land.guam.gov

Telephone: 671-649-LAND (5263)

Facsimile: 671-649-5383





DIPÅTTAMENTON MINANEHAN TÅNO' (Department of Land Management) GUBETNAMENTON GUÅHAN (Government of Guam)



MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

EDDIE BAZA CALVO Governor

RAY TENORIO Lieutenant Governor

October 5, 2016

MEMORANDUM

TO: Guam Land Use Commission (GLUC) Members

FROM: Chairman, Application Review Committee (ARC)

SUBJECT: Summary of Position Statements by ARC Members

RE: Zone Change Application – 2013-20

Listed below are the **APPLICATION REVIEW COMMITTEE POSITION STATEMENTS** as submitted:

PERMANENT VOTING MEMBERS

1. DEPARTMENT OF LAND MANAGEMENT: Recommend APPROVAL WITH CONDITIONS as follows:

That the Applicants adhere to all ARC recommendations as provided in their respective position statements.

2. GUAM ENVIRONMENTAL PROTECTION AGENCY:

No Position Statement has been received as of the date of this Memorandum of October 5, 2016.

3. **DEPARTMENT OF AGRICULTURE:**

Agriculture has reviewed the subject lot and request for a "Zone Change" from an "Agricultural" to an "M1" zone and finds that there are no major impacts to any agricultural activity and to any environmental issues regarding endangered species and habitat. However, our agency does recommend and require that proper mitigation measures are in place to prevent spillage of any industrial chemicals associated with any development activities. This is to protect our "Northern Aquifer" the major source of Guam's drinking water. To also aide in protecting our environment Agriculture encourages the land owner and developer to incorporate a landscaping plan that includes indigenous and/or fruit tree species planted on the site. These trees will help filter chemical pollutants and have the added benefits of windbreak protection, shading and an aesthetic component to enhance the area.

4. GUAM WATER WORKS AUTHORITY:

No Position Statement has been received as of the date of this Memorandum of October 5, 2016.

Continuation of Memorandum

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Re: Summary of Position Statement - Application No. 2013-20

GLUC Hearing of October 13, 2016

Date of Preparation of this Memorandum: October 5, 2016

Page 2 of 4

5. **GUAM POWER AUTHORITY**:

A. Comments and Recommendations Concerning GPA requirements:

- GPA has no objection, however customer is required to comply withy the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - Coordinate overhead/underground power requirements with GPA Engineering for new structure.
 - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
 - Maintain adequate clearance between any structures and electrical utility easements in accordance with NESC and GPA requirements.
 - Developer/Owner shall provide necessary electrical utility easements to GPA prior to final connection.
 - Provide scheduling and magnitude of project power demand requirements for new loads.
 - All relocation costs for GPA's facilities, if necessary, is 100% chargeable
 to the applicant including but not limited to labor and materials.
- Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
- 3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.
- 4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.
- B. General Comments

GPA has no objection to the request subject to the conditions cited above.

6. <u>DEPARTMENT OF PARKS AND RECREATION:</u>

We reviewed the subject application and have determined that the proposed zone change will not affect historic properties within the subject lot. Therefore, we have no objection to the approval of this zone change application.

7. <u>DEPARTMENT OF PUBLIC WORKS:</u>

The Department of Public Works (DPW) has inspected the location area on April 25, 2013 and has no objection to the applicant's requests, with the following conditions:

- a) Provide a preliminary site development plan showing the existing building and the proposed new building (butler type);
- b) The pre-engineered metal building (butler type) must be energy efficient; and,
- c) Because of this type of establishment deals with the repair of vehicles, it must be coordinated with the Environmental Protection Agency for waste management collection processing, storage and disposal permits.

Continuation of Memorandum

Re: Summary of Position Statement - Application No. 2013-20

GLUC Hearing of October 13, 2016

Date of Preparation of this Memorandum: October 5, 2016

Page 3 of 4

8. BUREAU OF STATISTICS AND PLANS:

Based on our review of the subject application as submitted, the Bureau provides the following comments and/or concerns:

- 1. The Bureau believes the proposed activity is consistent with existing activities in this particular area. According to the AICUZ (air Installation Compatible Use Zone) study and maps, this area is classified as APZ 1 (Accident Potential Zone), Ldn 65-70 (day-night average sound level). The AICUZ area represents the environs of an air facility, both on and off station, that are impacted by either safety hazards of noise from aircraft operations. APZ 1, Ldn 65-70 is described as imposing a lessened degree of hazard, but is still of strong enough impact to seriously affect residential or populated areas. The area is loud, but more tolerable in soundproofed structures. Industrial and commercial activities would be acceptable, along with agricultural uses.
- Given that the adjacent lot and lots nearby are a warehouse/equipment storage type activities and the activity due west is a light industrial/commercial land use (Conwood Hardware), the Bureau views the proposed zone change for auto repair and safety inspection activity expansion as a compatible activity.
- 3. Because the subject lot is located over the Northern Lens, we are concerned with oil petroleum and lubricants that may be stored or used on site. Also, we are concerned with the potential of these fluid accidentally making their way to the ground and seeping below. Steps must be taken to ensure that the Pollution Protection Plan is submitted to Guam Environmental Protection Agency (GEPA) for approval.
- 4. Should the zone change be approved, the Bureau recommends that there are measures to ensure that the property will be landscaped in such a way to provide a buffer between the subject lot and residential dwellings. This will improve the area in order to be aesthetically pleasing but also help reduce storm water runoff.
- 5. Because the site is presently an agricultural designated lot, we suggest that the applicant coordinate with the Department of Agriculture for an Agricultural Impact Statement.

Because this request is for an expansion of an existing activity and that the project area is presently overgrown vegetation and has damaged vehicles scattered throughout, and the compatibility of the activity to the surrounding area, the Bureau finds the proposed zone change request to adequately justify public necessity, public convenience and general welfare, and therefore recommends approval. In addition, the Bureau hopes our concerns and recommendations are taken into consideration as the commission reviews this application and makes its final decision.

Continuation of Memorandum

e: Summary of Position Statement - Application No. 2013-20

GLUC Hearing of October 13, 2016

Date of Preparation of this Memorandum: October 5, 2016

Page 4 of 4

EX-OFFICIO MEMBERS

1. DEPARTMENT OF PUBLIC HEALTH and SOCIAL SERVICES:

No Position Statement has been received as of the date of this Memorandum of October 5, 2016.

2. **GUAM FIRE DEPARTMENT:**

No Position Statement has been received as of the date of this Memorandum of October 5, 2016.

3. GUAM ECONOMIC DEVELOPMENT AUTHORITY:

No Position Statement has been received as of the date of thi Memorandum of October 5, 2016.

4. **GUAM PUBLIC SCHOOL SYSTEM:**

No Position Statement has been received as of the date of this Memorandum of October 5, 2016.

5. DEPARTMENT OF CHAMORRO AFFAIRS:

No Position Statement has been received as of the date of this Memorandum of October 5, 2016.

Marvin Q. Agullar Chairman, ARC



GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

April 30, 2013

MEMORANDUM

To:

Chairman, Guam Land Use Commission

Executive Secretary, Guam Land Use Commission

From:

General Manager

Subject:

Lot 5223-6-NEW-6-R1NEW-1, Municipality of Barrigada, (Immanuel W.S. Choi); Zone

Change Application from "A" (Agriculture) to "M-1" (Light Industrial) to expand its

existing warehouse. Application No. 2013-20

Guam Power Authority has reviewed the application described above and submits the following position statement:

A. Comments and Recommendations Concerning GPA requirements:

- GPA has no objection, however customer is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - Coordinate overhead/underground power requirements with GPA Engineering for new structures.
 - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
 - Maintain adequate clearance between any structures and electric utility easements in accordance with NESC and GPA requirements.
 - Developer/Owner shall provide necessary electric utility easements to GPA prior to final connection.
 - Provide scheduling and magnitude of project power demand requirements for new loads.
 - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.
- 2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
- 3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.
- 4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments

GPA has no objection to the request subject to the conditions cited above.

JOAQUÍN C. FLORES, P.E

Wis.

INFRASTRUCTURE CERTIFICATION FORM

Agency Certifying: Guam Power Authority

Applicant: Immanuel W.S. Choi

Location: Lot 5223-6-NEW-6-R1NEW-1, Barrigada

Type of Application: Zone Change GLUC/GSPC Application No. 2013-20

Brief Project Description:

"A" to "M-1" to expand its existing warehouse

For the purposes of this Certification, GOVERNMENT SERVICES, FACILITIES, and INFRASTRUCTURE include, but are not limited to: power lines poles and facilities; water lines, pumps and facilities; sewer and liquid waste disposal; storm water disposal; solid waste disposal; telephone lines and facilities; schools; health facilities; police and fire fighting service and facilities; roads; traffic and street lights; parks and recreational activities.

1.	I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently AVAILABLE AND IN PLACE to support this project: Yes No	
2.	If the answer to #1 above is YES, then: I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently ADEQUATE to support this project:	
	Yes ☐ No ⊠	
3	If the required GOVERNMENT SERVICES, EACH ITIES, and INTERASTRUCTURE output	

3.	If the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE currently in
	place are NOT AVAILABLE or they are AVAILABLE, BUT NOT ADEQUATE, itemize the
	services, facilities and infrastructure that are needed, the estimated cost thereof and whether funds
	are currently available and identified to develop such services, facilities and infrastructure:

Services, Facilities and Infrastructure Needed	Cost of Upgrades	Funds Available	Date Available	Funds Identified
Please see comments below				

I hereby certify that the foregoing is true and correct to the best of my knowledge.

JOAQUIN O FLORES, P.E.

5-2-13 Date

Comments:

Based on a preliminary inspection of the site, the electrical facilities <u>may</u> require upgrading to meet the demand of the proposed project. A system impact assessment maybe required to determine the effect of this facility on GPA's existing power distribution system. The applicant will be responsible for the cost of any required system upgrade.

Eddie Baza Calvo Governor of Guam

Ray Tenorio
Lieutenant Governor



SAGAN PLANU SIHA YAN EMFOT Benefitment of and Management P.O. Box 2950 Hagatña, Guam 96932 Inti: Horilee T. Crisostomo Tel: (671) 472-4201/3 Fax: (671) 477-1812 Inti: Director

MEMORANDUM MAY 1 4 2013

To:

Chairman, Guam Land Use Commission

Via:

Executive Secretary, Department of Land Management

From:

Director, Bureau of Statistics and Plans

Subject:

Position Statement on **Application No. 2013-20**; Lot 5223-6-NEW-6-R1NEW-1, Barrigada; Immanuel W.S. Choi; Zone Change – A to M-1;

Proposed Use: Expansion of existing auto repair shop.

The applicant is requesting to rezone the subject lot from "A" (agriculture) to "M-1" (light industrial) in order to expand his existing auto repair facility to accommodate an additional 7,000 square feet of building space for the present activity. According to the applicant's representative, construction of the additional space will be of butler style material. The on-site improvements will consist of 65 parking stalls with 4 accessible parking stalls and a catchment system to handle all surface water runoff within the project boundary. The property is 5,271 square meters or 1.42 acres in land area and is adjacent to the existing auto repair shop to the west. Access to the property is via Route 16 onto Juan G. Fejeran Street on the foot of Barrigada Heights and north of the Department of Revenue and Taxation. The surrounding land uses within a 750 feet radius consists of a warehouse, construction material sales yard, the Coca Cola storage facilities, Catholic Social Services, a Government of Guam facility, a quarry and single family dwellings.

Based on our review of the subject application as submitted, the Bureau provides the following comments and/or concerns.

- The Bureau believes the proposed activity is consistent with existing activities in this particular area. According to the AICUZ (Air Installation Compatible Use Zone) study and maps, the area is classified as APZ 1 (Accident Potential Zone), Ldn 65-70 (day-night average sound level). The AICUZ area represents the environs of an air facility, both on and off station, that are impacted by either safety hazards of noise from aircraft operations. APZ 1, Ldn 65-70 is described as imposing a lessened degree of hazard, but is still of strong enough impact to seriously affect residential or populated areas. The area is loud, but more tolerable in soundproofed structures. Industrial and commercial activities would be acceptable, along with agricultural uses.
- 2. Given that the adjacent lot and lots nearby are a warehouse/equipment storage type activities and the activity due west is a light industrial/commercial land use (Conwood Hardware), the Bureau views the proposed zone change for auto repair and safety inspection activity expansion as a compatible activity.

- 3. Because the subject property is located above the Northern Lens, we are concerned with oil, petroleum and lubricants that may be stored or used on site. Also, we are concerned with the potential of these fluids accidentally making their way to the ground and seeping below. Steps must be taken to ensure that the Pollution Protection Plan is submitted to Guam Environmental Protection Agency (GEPA) for approval.
- 4. Should the zone change be approved, the Bureau recommends that there are measures to ensure that the property will be landscaped in such a way to provide a buffer between the subject lot and residential dwellings. This will improve the area in order to be aesthetically pleasing but also help reduce storm water runoff.
- 5. Because the site is presently an agricultural designated lot, we suggest that the applicant coordinate with the Department of Agriculture for an Agricultural Impact Statement.

Because this request is for an expansion of an existing activity and that the project area is presently overgrown vegetation and has damaged vehicles scattered throughout, and the compatibility of the activity to the surrounding area, the Bureau finds the proposed zone change request to adequately justify public necessity, public convenience and general welfare, and therefore recommends approval. In addition, the Bureau hopes our concerns and recommendation are taken into consideration as the commission reviews this application and makes its final decision.

ORILEE T. CRISOSTOMO

Cc: GEPA

DoAG

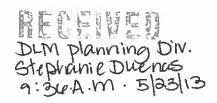
DPW DPR

GWA



The Honorable Eddie Baza Calvo Governor

The Honorable Ray Tenorio Lieutenant Governor



DIPATTAMENTON CHE'CHO' PUPBLEKO Carl V. Dominguez Director Jon Jay Rojas Deputy Director

MAY 23 2013

artment of Land Management

Intt: 19

May 17, 2013

MEMORANDUM

TO:

Chairperson, Guam Land Use Commission (GLUC)

VIA:

Executive Secretary, Department of Land Management (DLM)

FROM:

Acting Director

SUBJECT: Position Statement on Application No. 2013-20

Lot No. 5223-6-RINEW-I, Municipality of Barrigada

Zone Change Requests from Agricultural ("A") Light Industrial Zone ("M-1")

Buenas yan hafa adai!

The applicant, Immanuel W.S. Choi, is petitioning the GLUC for a zone change requests from ("A") to ("M-1"). The proposal is to expand the existing facility to accommodate an additional 7,000 square feet of space. The on-site improvement will consists of auto repair shop, vehicle inspection facility and a 65 parking stalls with 4 accessible stalls. The land area consists of 5,271 square meters or 50,633 square feet. Access to the site is approximately 455 feet from the intersection of Route 16 and Juan G. Fejeran Street.

The Department of Public Works (DPW) has inspected the location area on April 25, 2013 and has no objection to the applicant's requests, with the following conditions:

- a) provide a preliminary site development plan showing the existing building and the proposed new building (butler type);
- b) the pre- engineered metal building (butler type) must be energy efficient; and,
- c) because of this type of establishment deals with the repair of vehicles, it must be coordinated with Environmental Protection Agency for waste management collection processing, storage and disposal permits.

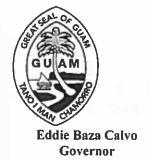
Should you have any questions, please contact Mr. John F. Calanayan, Acting Chief Engineer or Maryrose M. Wilson, Engineer III in the Division of Capital Improvement Projects (CIP) at 646-3189/ 3225. HC

Dangkulu na Si Yu'os Ma'ase!

Mrwilson: 05/16/13

JAY ROJAS





Ray Tenorio Lt. Governor Department of Agriculture Dipattamenton Agrikottura

JUL 4 1 2016

300-7970 / 7969 / 7966 Department of Land Management 300-7973 / 7972 / 7967 Time The Lind West State of Land Management (1988)

300-7974

735-3955/56; Fax 734-6570

300-7975/6

475-1426/27; Fax 477-9487 300-7965 Fax 734-6569 Matthew L.G. Sablan Director

> Jessie B. Palican Deputy Director

July 8, 2016 Memorandum

To:

Director, Department of Land Management

Agricultural Development Services

Aquatic & Wildlife Resources

Forestry & Soil Resources

Plant Inspection Station

Attn:

Executive Secretary, Guam Land Use Commission and Guam Seashore

Protection Commission

Director's Office

Plant Nursery

Animal Health

From:

Director of Agriculture

Subject:

"Agricultural & Environmental Impact Statement" for a "Zone Change"

request from an "Agricultural Zone" to an "M1" on Lot 5223-6-NEW-6-R1NEW-1 on Chalan Juan Fejeran in the Municipality of Barrigada

(Immanuel W.S. Choi).

Agricultural" to an "M1" zone and finds that there are no major impacts to any agricultural activity and to any environmental issues regarding endangered species and habitat. However our agency does recommend and require that proper mitigation measures are in place to prevent spillage of any industrial chemicals associated with any development activities. This is to protect our "Northern Aquifer" the major source of Guam's drinking water. To also aide in protecting our environment Agriculture encourages the land owner and developer to incorporate a landscaping plan that includes indigenous and/or fruit tree species planted on the site. These trees will help filter chemical pollutants and have the added benefits of windbreak protection, shading and an aesthetic component to enhance the area.

Please contact our **Agricultural Development Services & Forestry** divisions here at the agency for further assistance and guidance at 300-7972 & 7976 respectively. Our Forestry division grows and maintains these native tree species should you choose to incorporate them into the project. Contact their office for assistance and consultation at 300-7976. Please be aware that the increased loss of Guam's native habitat contributes to a diminished capacity to sustain and support a healthy island community.

It is vital that all land developers take a proactive step in preventing and causing this loss. To fully benefit and see these eco-friendly practices being used visit our **Department of Agriculture Organic and Environmental Demonstration Farm**.

For questions or concerns regarding Agriculture's position please contact our office at 300-7973. Thank you in this regard.

MATTHEW L.G. SABLAN

Director



Eddie B. Calvo Governor

Department of Parks and Recreation Government of Guam

490 Chalan Palasyo Agana Heights, Guam 96910 Director's Office: (671) 475-6296/7 Facsimile: (671) 477-0997

Facsimile: (671) 477-0997
Parks Division: (671) 475-6288/9
Guam Historic Resources Division: (671) 475-6294/5

Facsimile: (671) 477-2822



Department of Land Managemen

Ray Tenorio Lt. Governor

In reply refer to: RC2013-0654

July 23, 2013

Memorandum

To:

Executive Secretary, Guam Land Use Commission

From:

Director, Department of Parks and Recreation

Subject:

DLM Application No.: 2013-20, Zone Change

Lot No. 5223-6-NEW-6-R1NEW-1, Municipality of Barrigada Applicant: Immanuel W.S. Choi, Rep. by: Ignacio F. Santos

Case Planner: Celine Aguilar

We reviewed the subject application and have determined that the proposed Zone Change will not affect historic properties within the subject lot. Therefore, we have no objection to the approval of this Zone Change Application.

If you have any questions, please call us at 475-6339.

Raymond F.Y. Blas

lba



ATTACHMENT C



RAY TENORIO

DIPÅTTAMENTON MINANEHAN TÅNO' (Department of Land Management) GUBETNAMENTON GUÅHAN (Government of Guahan)



DAVID V. CAMACHO Deputy Director

Director

Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

October 6, 2016

MEMORANDUM

Lieutenant Governor of Guahan

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Staff Report - Application No. 2016-12

Zone Change Request

Lot 5027-5- R1, Harmon, Municipality of Tamuning.

1. PURPOSE:

- A. Application Summary: The Applicant, Sunny Plastics, Guam, Inc., represented by Harry D. Gutierrez, is requesting the approval of a Zone Change from "R-2" (Multi-Family Dwelling) to "M-1" (Light Industrial) Zone, in order to allow zoning conformance of uses of two (2) existing (as-built) warehouses with loading docks on site on Lot 5027-5-R1, Harmon, Municipality of Tamuning.
- B. Legal Authority: Title 21GCA, Chapter 61, and Chapter 61 Article 6, Part 3 (Changes of Zones), Sections 61630 thru 61638 (Zoning Law).

2. FACTS:

- A. Location: The subject property is fronting a 40-foot right of way (Kakkak Lane) on the western front of the lot and approximately 950 feet west of Route No. 16 and abutting Global Recycling yard (M-1 Zone) on the eastern border. The main access to the site is via Kakkak Lane that connects to Taitano Street and Route No. 16. (See ATTACHMENT 1).
- B. Lot Area: 4,205 square meters or 45,262 square feet or (1.13) acres
- C. Present Zoning: "R-2" (Multi-Family Dwelling) Zone.
- D. Field Description: The subject lot has 2-wareshouses with office and a loading dock with support structures to include parking for employees and clients and company equipment (trucks, vans, etc). The site is contained within a perimeter fence for security purposes.
- E. Topography to the immediate area is flat as the surrounding area formerly served as part of post-war Harmon Airfield. Land uses near the site are

Mailing Address: P.O. Box 2950 Hagåtña, GU 96932



E-mail Address: dlmdir@land.guam.gov

Telephone: 671-649-LAND (5263)





residential apartments (R-2 zone) on the western and eastern borders within 100 feet, and a large warehouse and storage yard with equipment/trailers and a container yard. The abutting lot on the eastern border is a metal recycling and processing center. Within 300 – 500 feet radius on the western and eastern borders are (M-1) zones.

Commercial zoned lots are along Route No. 16 on the east approximately 950 feet from the subject lot. The land use activities are mixed and all utility infrastructures are within 100 feet of the subject development. The proposed development and existing conditions does not pose a significant impact to the immediate surrounding or existing infrastructure.

- F. Masterplan: Medium/High Density Residential Development¹.
- G. Community Design Plan: Mix Uses of residential, commercial and light-industrial.
- H. Previous Commission Action: Territorial Planning Commission (TPC) June 8, 1989 for a Zone Variance to construct 2-warehouses for a term of 8-years. Term expired on July 14, 1997. (See Attachment 2)

3. APPLICATION CHRONOLOGICAL FACTS:

A. Date Heard By ARC: February 18, 2016

B. Public Hearing: September 6, 2016

A public hearing was held at the Tamuning Mayor's Office/Senior Citizen/Community Center on September 6, 2016, at 6:00 P.M. Present were, the Case Planner, Mr. Harry D. Gutierrez, Applicant's representative, Mayor Louise Rivera and a few MPC Members, and 1- neighbor/lot owner present.

(Note: Minutes of the hearing are provided in ATTACHMENT 3).

- 4. <u>STAFF ANALYSIS:</u> A Zone Change must address <u>Public Necessity</u>, <u>Public Convenience</u> and <u>General Welfare</u> criteria. Analysis provided by the applicant are as follows:
 - A. Public Necessity: The applicant provides that area is developing into more light industrial activities and to accommodate a growing population, products, commodities demands and the anticipated military build-up and other logistical/goods/commodities requirements to increase in the next few years and beyond. There will be increased demand for goods and maintaining warehousing/storage facilities for all goods incoming and outgoing on the island that will serve the island community.
 - B. <u>Public Convenience</u>: The applicant provides the site location is central and convenient, the current uses on the property would be consistent with the current land uses and any future masterplan of the area of Harmon and in the immediate area and within a radius of

¹ Kabales Na Planu Para Guahan. Prepared by the Bureau of Planning. September 1978. See Plat No. 10.

Staff Report –Application No. 2016-12 Zone Change – Lot 5027-5-R1, Municipality of Tamuning Page 3 of 4

500 to 3,000 feet of the subject lot. The location is ideally situated to all areas with a large population, very near the airport and commercial districts to obtain goods and commodities; and

C. General Welfare: The applicant provides proposed rezoning and existing uses will protect the general public, the immediate surroundings and properties by being consistent for light-industrial activities that are on-going at the present time and for future uses and requirements that is permitted in a light industrial zone. The owners have maintained the warehouse facilities very well since its acquisition, and any upgrades on the site will ensure that all permitting requirements of building codes, permits and conditions of the land use commission and all government are adhered to, as well as to minimizing impacts to the immediate surroundings, the general public and specially our environment and the water lens below (part of the Northern Recharge Area). The existing operations/development on the site will continue to provide employment of local residents and contribute positively to improving the island's growing economy.

Certain surrounding and abutting parcels (within 500-1,000 feet radius) have been subjected to a zone change from "R-2" (Multi-Family Dwelling) to "Light Industrial", all were either rezoned through legislative action and/or past Commission action. Multi-family uses exist per zoning designation asserted by the 1968 Land Use Master Plan, the current mix use of "R-2 and "M-1", of which clearly depicts current land use overlay of the immediate area.

Of the possible competing uses in the immediate and surrounding area we can only surmise is that of high traffic due to Kakkak Lane serving as a single egress/ingress of dependent properties.

Warehousing on-site has been in existence since its approval for a use variance in 1997. Information is scarce to determine if any other conditions were applied beyond its 7 year restriction. The property remains vacant at this time. We are of the understanding the property owner has yet been issued any further permits for operation or occupancy of its facilities due to the current zoning discrepancy. And while such use has been subjected to past government permitting approval up to the point of discovery, we applied the property owner to rectify this matter by submitting this request.

With respect to complying with infrastructure requirements, we further understand that while in operation, existing facilities have adhered to agency requirements on water use, waste disposal, power consumption, and storm water drainage. Thus, the current use of the property for commercial and/or industrial activities through the years has demonstrated viability by complying with such requirements in the past.

The zone change will not reduce any zoning standards in the immediate vicinity, but rather, the improvements to the subject lot will create a more stable environment that will provide for an orderly development scheme within the area and adjacent surroundings. The Applicants are aware and will comply with all requirements and conditions and any concerns imposed by government agencies and other mandates in their development plans, resulting from a change of zone as requested.

In supporting an industrial or commercial use, we find that the added note to the protection of the "general welfare of the public" is that the subject lot is abutting or near other existing light-industrial activities and residential development has not prosper due expansive light industrial growth in the immediate surroundings. As such, it is the position of DLM Planning Staff that the area is best suited for industrial type uses followed by commercial activities/uses.

5. <u>RECOMMENDATION</u>: Recommend <u>Approval</u> and the applicants shall adhere to all ARC recommendations, Commission conditions and requirements.

MARVIN O. AĞUILAR Guam Chief Planner

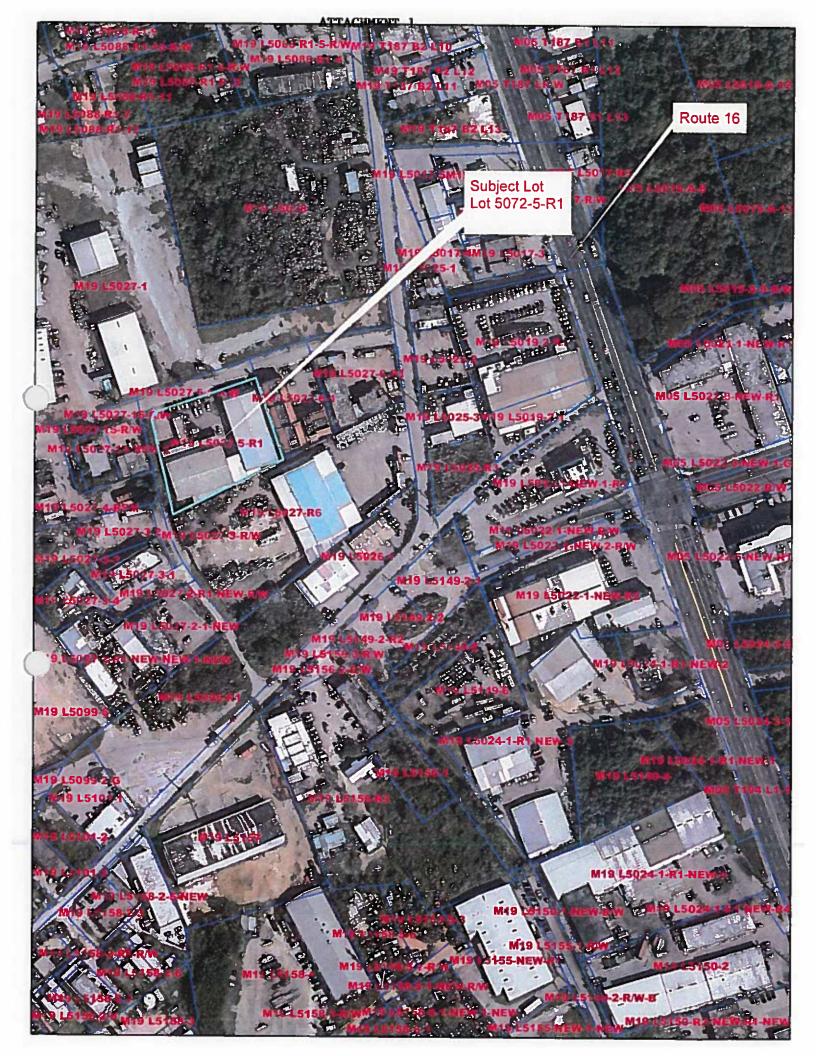
Attachment 1 - Site Location

Attachment 2 - Territorial Planning Commission (TPC) June 8, 1989 for a Zone Variance to construct 2-warehouses for a term of 8-years. Term expired on July 14, 1997.

Attachment 3 - Minutes of Public hearing

Attachment 4 - Various Zone Change Amendment Maps in the immediate area.

Case Planner: Penmer C. Gulac, Planner IV



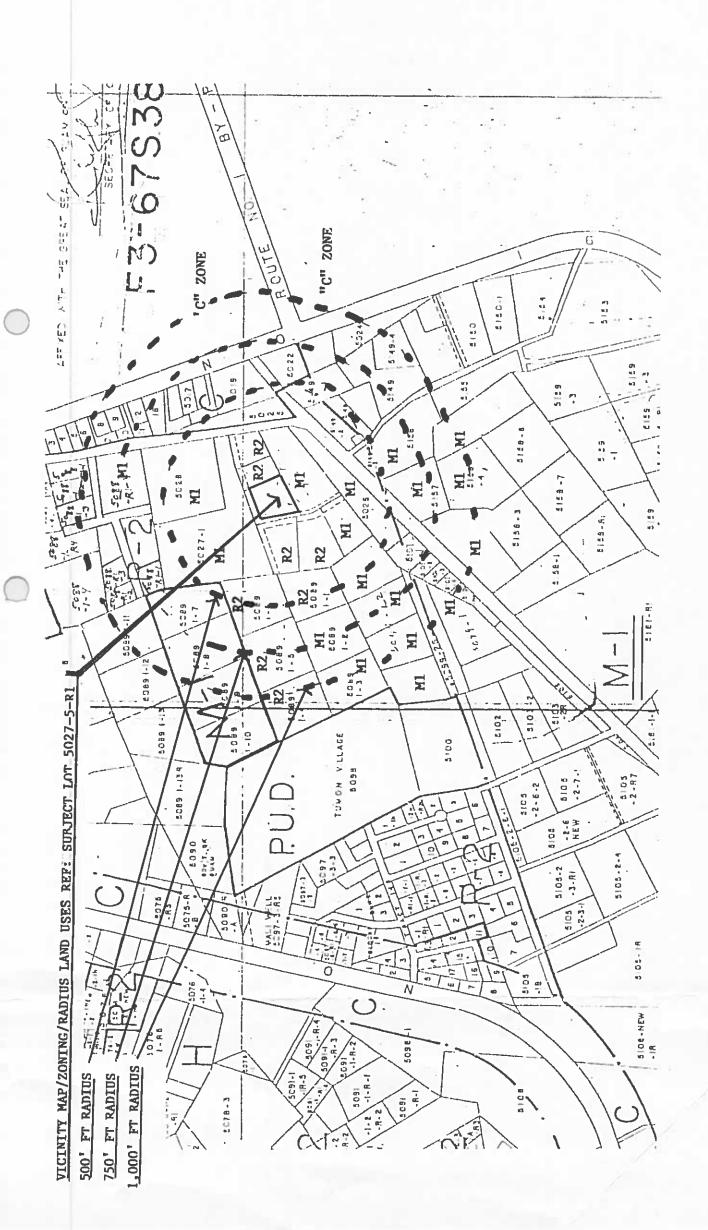
TEI ORIAL PLANNING COMMISSION DEPARTMENT OF LAND MANAGEMENT GOVERNMENT OF GUAM AGANA, GUAM 96910

ORIGINAL

NOTICE OF ACTION

July 14,	1989
(DATE)	
TO: Chang Sok Chang c/o Roland Villav	erde
The Territorial Planning Commission,	t its meeting on <u>June 8, 1989</u> / Denied
/ Approved	/ Tabled
Approved with Conditions	
your request on Lot No. 5027-5, Harm	/ Subdivision
Change of Zone (Including PUD)*	**/ Subdivision Tentative Approval
- XX / Zone Variance	
Conditional Use	Final Approval
PUD Amendment	Resubdivision
Preliminary PUD Prior to Public Hearing	Subdivision Definition
/ Determination of Policy Definition	/ Miscellaneous
tion, please see the conditions beto	w for further details.
Type get an an over a m	
NOTATEON: Zone Variance to const facility in an "R-2" (ruct 2 warehouses and an office Multiple-family dwelling) Zone.
following conditions:	enced; he restricted from 7 a.m. to 7 p.m.;
	FELIX C. BENAVENTE, Territorial Planner
cc: Building Permits Section, DPW **NOTE: Approval by the TPC of a Z approval but rather a reco approval. Notification wi Governor.	- Attention: Jesus Ninete one Change does not constitute final numendation to the Governor for his ill be sent upon action taken by the
and the second s	

-Marc marrial 7/17/29



501429

AMENDMENT 40

Zoning Map No. 13-67838

Adopted by the Territorial Land Use Commission on: HARMON, TAMUNING

Executive Secretary G. CASTRO

October 28, 1993

Approved by the Governor of Guarber 3 0 1993 oreple 5.

ØSEPH F. ADA

Covernor of Guam

Affixed with the Great Scal of Guam on:

FRANK F. BLAS

Lt. Governor of Guam

NORTH

Commonwealth Now!

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LOT 5089-1-1, HARMON, TAMUNING

ZONE CHANGE FROM "R-2" TO "M-1"

Attachment 3

PUBLIC HEARING MINUTES: 9/6/2016

Page 1 of 2

The required public hearing was held at the Tamuning Community/Senior, Community Center on September 6, 2016, at 6:00 P.M., minutes as notes:

The Case Planner presented the proposed project and read the positions statements from Departments of Public Works, Guam Waterworks, Guam Power Authority, Bureau of Statistics and Plans, Parks and Recreation/Historical Preservation Office and Agriculture. Mr. Gutierrez highlighted details of the application and clients intentions; he discussed the time frame of the application process, proposed construction, improvements and compliance of the building code, permits required for new development on the site; access to the site and area of development to maximize the proposed use and permitted uses on the subject lot.

Public comments and concerns that were noted are as follows:

Mr. Greg Perez, MPC member :

He inquired about the attendance of residents to the hearing and notices given and participating for comments for the development.

Response (from the Case Planner):

All property owners within the 500 foot radius of the subject lot was mailed a certified letter from Department of Land Management within the requirement of Zoning Law, informing owners of the scheduled hearing, date and location. It not a mandatory requirement for lotowners to attend hearing, however, they are encourage to attend and take part in the hearing, provide

Response/statement from Mr. Gutierrez (representative):

Mr. Gutierrez stated that the Harmon warehouses will be repaired, upgraded to meet all building and fire codes and agencies clearances for occupancy and proposed uses. The perimeter will be cleaned and will also improve the site security, parking area and premises, to include clearing the road abutting the western border of the lot. Further stated that the applicants/owner will improve the site with some landscaping using local flora to buffer activity to nearby residential lots and improve the required ponding basin on site.

ATTACHMENT 3

PUBLIC HEARING MINUTES: 9/6/2016

Page 2 of 2

Mayor Louise Rivera:

She stated that the municipal planning council will further review the application and will be discussing other matters of the in the area .. that the MPC will further review the application and work with the consultant and owners ..as how they have invested interests in our village and community and if they can provide assistance and work together... she further encourage the owners to come in and see mayor and staff if they have other needs. She also noted other lots were rezoned to M1 in the immediate area and neighborhood.

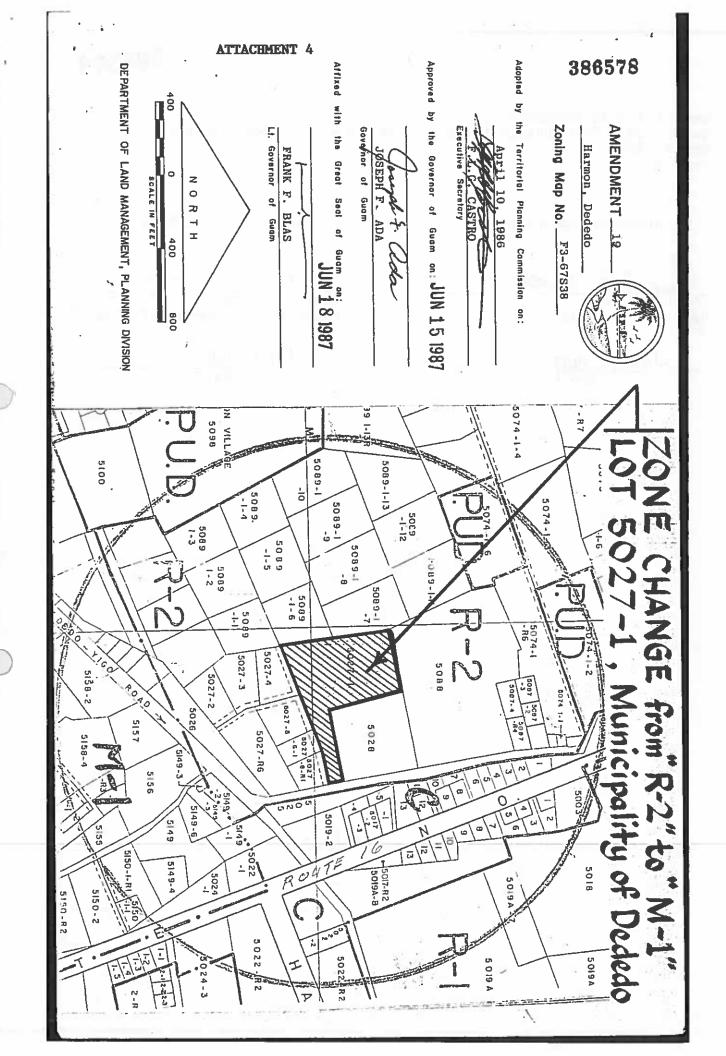
Planning Staff Summary of Public Hearing:

After discussion on rezoning and information given by the consultant, planning staff encouraged the lotowner to be proactive in resolving any property issues and that they need to work with the village mayor and her staff and any conditions recommended by MPC.

There were no opposition on the proposed rezoning and activity at the hearing by those in attendance. Planning Staff reminded the Mayor to provide a Municipal Planning Council Resolution prior to the Land Use Commission hearing.

Planning staff informed those in attendance that the Application Review Committee (ARC) Agencies had no objections on the application and that they provided recommendations for proposed development. The next hearing will be with the Guam Land Use Commission (GLUC), ITC Building, and will be announced in the daily newspaper circulation 10 days prior to the hearing date and time.

There hearing was adjourned at 6:50 p.m.



Memorandum to Governor Reference: Zone Change Request, Lot 5027-1, Harmon, Dededo May 8, 1987 Page 2

() REZONING APPROVED

Joseph F. ADA

Governor of Guam

JUN 15 1987 (DATE) () REZONING DISAPPROVED

FRANK F. BLAS

Lieutenant Governor of Guam

JUN 1 2 1987 (DATE)





Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

> Mailing Address: P.O. Box 2950 Hagátña, GU 96932

Website: http://land.guam.gov

E-mail Address: dimdir@land.guam.gov

Telephone: 671-649-LAND (5263)

> Facsimile: 671-649-5383





DIPĂTTAMENTON MINANEHAN TÂNO' (Department of Land Management) GUBETNAMENTON GUĂHAN (Government of Guahan)



RAY TENORIO Lieutenant Governor of Guahan DAVID V. CAMACHO Deputy Director

October 3, 2016

MEMORANDUM

TO:

Guam Land Use Commission (GLUC) Members

FROM:

Chairman, Application Review Committee (ARC)

SUBJECT: Summary of Position Statements by ARC

Re:

Zone Change

Application No. 2016-12,

Lot 5027-5-R1, Harmon, Tamuning GLUC Hearing – October 13, 2016

Listed below is the compilation of Positions received from various ARC Member Agencies as submitted to Planning Division. The conditions as imposed by the ARC Member Agencies are listed when applicable.

- 1. **DEPARTMENT OF LAND MANAGEMENT (DLM): Recommends** APPROVAL WITH NO CONDITIONS
- 2. **BUREAU OF STATISTICS AND PLANS (BSP**

The Bureau has comments and recommendation. No Objection

3. DEPARTMENT OF PARK AND RECREATION/HISTORICAL PRESERVATION OFFICE (DPR/HPO):

DPR/HPO has determined that the proposed project will not affect historic properties and they have no objections to approving the subject application.

- 4. **GUAM WATERWORKS AUTHORITY (GWA):** No Objections with recommendations noted.
- **DEPARTMENT OF PUBLIC WORKS (DPW):** 5. No Objections with recommendations noted.
- 6. **ENVIROMENTAL PROTECTION AGENCY (GEPA):** No Position Statement Received as of Staff Report Date.

Summary of Position Statements by ARC
Re: Zone Change - Application No. 2016-12,
Lot 5027-5-R1, Harmon, Tamuning;
GLUC Hearing - October 13, 2016

7. **GUAM POWER AUTHORITY (GPA):**

No Objections with recommendations and requirements noted.

8. <u>DEPARTMETN OF AGRICULTURE (DoAG):</u>

No Objections with recommendations and requirements noted.

EX OFFICIO

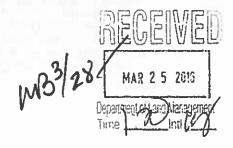
- GUAM FIRE DEPARTMENT (GFD):
 No Position Statement Received as of Staff Report Date
- 2. <u>GUAM ECONOMIC DEVELOPMENT AGENCY (GEDCA)</u>: NO OBJECTIONS.
- DEPARTMENT OF EDUCATION (DOE):
 Has not submitted a Position Statement as of Staff Report date.
- 4. <u>DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES (DPHSS)</u>: Has not submitted a Position Statement as of Staff Report date.

Marvin Q Aguilar Guam Chief Planner

Case Planner: Penmer Gulac

ATTACHMENTS: Position Statements as noted







GLENN LEON GUERRERO

Director

FELIX C. BENAVENTE

Deputy Director

RECEIVED 3/25/10 KB Kevin Billuk

March 21, 2016

MEMORANDUM

TO:

Director, Department of Land Management

FROM:

Director

APPLICATION:

2016-12

APPLICANT:

Sunny Plastic, Guam

SUBJECT:

Zone Change from "R-2" to "M-1"

Lots 5027- 5-R1, Harmon

Buenas yan Hafa Adai!

The applicant, Sunny Plastic, Guam is requesting the existing "R-2" (Multi Family Dwelling) to change to "M-1" (Light Industrial) zone. The primary access to the area is from Kakkak Lane thru west Taitano Street along East of Route 16. The area consists of 4,205 square meters or 45,262 square feet. The owner is a local company and have operated in Guam for over 30 years and their intent is to rezone the property and make it compatible to the neighbor ing lots and put its uses into compliance of two warehouses, office spaces, equipment parking and loading dock on site.

Department of Public Works (DPW) recommendations:

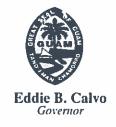
- must provide a copy of the as built drawings for the existing structure;
- must meet the occupational safety requirements;
- must have electrical safety checklists;
- · must consider the exiting and egress safety;
- · warehouse must be well ventilated; and
- fire extinguisher must be on site to avoid hazard to the public or within the neighboring property

DPW recommends approval, subject to the comments reviewed by the Application Review Committee (ARC) with conditions that the complete set of drawings must meet all the requirements in conformance with the latest building code edition including the Building Law of Guam.

If you have any questions, please call John F. Calanayan, Acting Engineer in Charge or Maryrose M. Wilson, Engineer III in the Division of Capital Improvement Projects (CIP) at 646-3189/3224.

Dangkulu na Si yu os Ma'ase

GLENN LEON GUERRERO



Department of Parks and Recreation Government of Guam

490 Chalan Palasyo Agana Heights, Guam 96910 Director's Office: (671) 475-6296/7 Facsimile: (671) 477-097

Parks Division: (671) 475-6288/9 Guam Historic Resources Division: (671) 475-6294/5 Facsimile: (671) 477-2822



William N. Reyes
Deputy Director

Ray Tenorio
Lt. Governor

In reply refer to: RC2016-0082

February 24, 2016

Memorandum

To:

Executive Secretary, Guam Land Use Commission

From:

Director, Department of Parks and Recreation

Subject:

DLM Application No. 2016-12, Zone Change

Lot 5027-5-R1, Harmon, Municipality of Tamuning

Applicant: Sunny Plastic, Guam, Inc., c/o Harry D. Gutierrez

Case Planner: Penmer Gulac

We reviewed the subject and determined that the Zone Change will not affect historic properties within the subject lot, Therefore, we have no objection to the approval of this Zone Change Application.

If you have any questions, please do not hesitate to call us.

Robert S. Lizama



GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN P.O.BOX 2977 • AGANA. GUAM U.S.A. 96932-2977

February 18, 2016

MEMORANDUM

Chairman, Guam Land Use Commission

Executive Secretary, Guam Land Use Commission

From:

To:

General Manager

Subject:

Lots 5027-5-R1, Harmon, Municipality of Tamuning, (Sunny Plastic, Guam); Zone Change Application from "R-2" (Multi-Family Dwelling) to "M-1" (Light-Industrial) for

zoning compliance on existing warehouses. Application No. 2016-12

Guam Power Authority has reviewed the application described above and submits the following position statement:

A. Comments and Recommendations Concerning GPA requirements:

- 1. Applicant is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - Coordinate overhead/underground power requirements with GPA Engineering for new structures.
 - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
 - Maintain adequate clearance between any structures and electric utility easements in accordance with NESC and GPA requirements.
 - Developer/Owner shall provide necessary electric utility easements to GPA prior to final connection.
 - Provide scheduling and magnitude of project power demand requirements for new loads.
 - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant
 including but not limited to labor and materials.
- 2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
- A system impact assessment may be required to determine the effect of this facility on GPA's
 existing power facilities.
- 4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments

GPA has no objection to the request subject to the conditions cited above.

SJOHNM. BENAVENTE, P.E.

ASG/am

Q

INFRASTRUCTURE CERTIFICATION FORM

Agency Certifying: Guam Power Authority Applicant: Sunny Plastic, Guam Location: Lots 5027-5-R1, Tamuning Type of Application: Zone Change GLUC/GSPC Application No. 2016-12 Brief Project Description: "R-2" to "M-1" for zoning compliance on existing warehouses. For the purposes of this Certification, GOVERNMENT SERVICES, FACILITIES, and INFRASTRUCTURE include, but are not limited to: power lines poles and facilities; water lines, pumps and facilities; sewer and liquid waste disposal; storm water disposal; solid waste disposal; telephone lines and facilities; schools; health facilities; police and fire fighting service and facilities; roads; traffic and street lights; parks and recreational activities. 1. I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently AVAILABLE AND IN PLACE to support this project: Yes 🔀 No 🗌 2. If the answer to #1 above is YES, then: I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently ADEQUATE to support this project: Yes 🔲 No 🔯 3. If the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE currently in place are NOT AVAILABLE or they are AVAILABLE, BUT NOT ADEQUATE, itemize the services, facilities and infrastructure that are needed, the estimated cost thereof and whether funds are currently available and identified to develop such services, facilities and infrastructure: Services, Facilities and Cost of Upgrades Funds Date Available Funds Infrastructure Needed Available Identified Please see comments below I hereby certify that the foregoing is true and correct to the best of my knowledge. General Manager

Comments

Based on a preliminary inspection of the site, the electrical facilities <u>may</u> require upgrading to meet the demand of the proposed project. A system impact assessment maybe required to determine the effect of this facility on GPA's existing power distribution system. The applicant will be responsible for the cost of any required system upgrade.



GUAM WATERWORKS AUTHORITY

Gloria B. Nelson Public Service Building 688 Route 15, Mangilao, Guam 96913

MEMORANDUM

March 16, 2016

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Department of Land Managemen Time _______inti

TO:

Director, Department of Land Management

FROM:

Miguel C. Bordallo, P.E., General Manager

SUBJECT:

Position Statement on Zone Change Application No. 2016-

12 for Lot 5027-5-R1, in the Municipality of Tamuning.

APPLICANT(S):

Sunny Plastic Guam Inc.

The Guam Waterworks Authority (GWA) has reviewed the applicant's request for a zone change from "R2" (Multi-Family Dwelling) to "M-1" (Light-Industrial) zone to put into compliance the uses of the two warehouses for warehousing, office spaces, and equipment parking and loading dock on site with adequate parking to be provided for the existing uses and operation.

This memorandum shall serve as GWA's position statement to the above zone change request related to availability of water and sewer infrastructures to serve the above subject lot. This position statement shall not be construed as notice that water and sewer systems have the capabilities to accommodate the proposed development including fire flow without on-site or off-site improvements. Any extension of the water and sewer systems and/or capacity upgrades required to serve property shall be subject to the rules and regulations of GWA. Any required extension to the existing facilities to serve the subject properties shall be at expense of the applicant.

Given the information provided in the application and field observations, the following comments are conditions for GWA's position in favor of the approval of this zone change application:

Page 2
GWA Position Statement
ARC Application No. 2016-12
Applicant(s): Sunny Plastic Guam Inc.

- 1. Existing facility had a pressure recording of 31 psi and is utilizing a 3/4" water meter located on Kakkak Lane on the opposite side of the street from subject lot. Application states that the existing facility on subject lot is currently connected to public sewer however, GWA records indicate that the Applicant is not connected. The Applicant shall set up an appointment with GWA Engineering Department for a site inspection to confirm the sewer facilities. If not connected to public sewer and existing sewer facilities are confirmed under Guam Environmental Protection Agency and GWA to be available, the Applicant will be required to connect. Prior to connection the Applicant may be subject to sewer pre-treatment requirements. The Applicant is subject to all GWA rules and regulations including all fees regarding public sewer services prior to this zone change approval.
- 2. Applicant must install a backflow preventer after the meter. Backflow preventers are required for industrial/agricultural activities.
- If the facility will be expanded the Applicant must:
 - a. Provide GWA Engineering Department with the proposed water demand and sewer production calculations for the facility on subject lot in order to determine if water and sewer can be accommodated.
 - b. Provide a property map illustrating the existing point of water and sewer connections in order to identify specific water and sewer lines that will be affected.
- 4. Expansion of existing facilities may be subject to water and/or sewer system development charges (SDC).

This GWA Position Statement shall remain valid for 365 calendar days from the date of this response. Please contact GWA Engineering Division regarding water and sewer system improvement design and construction standards and procedures. For additional information please contact Mauryn McDonald, Permits and New Area Development Supervisor, at 300-6054.



Governor Ray Tenorio

Lt. Governor

Department of Agriculture Dipåttamenton Agrikottura

Director's Office **Agricultural Development Services** Plant Nursery Aquatic & Wildlife Resources Forestry & Soil Resources **Plant Inspection Station** Animal Health

300-7970 / 7969 / 7966 300-7973 / 7972 / 7967 300-7974 735-3955/56; Fax 734-6570 300-7975/6

FEB 1 7 2015

Matthew L.G. Sablan

Director

Jessie B. Palican **Deputy Director**

February 15, 2016 Memorandum

To:

Director, Department of Land Management

Attn:

Executive Secretary, Guam Land Use Commission and Guam Seashore

Protection Commission

From:

Director of Agriculture

Subject:

"Agricultural & Environmental Impact Statement" for a "Zone Change request on Lot 5027-5-R1 located on Kakkak Lane Harmon from an "R-2 to an

M1" (Light Industrial). (Sunny Plastic, Guam Inc. c/o Harry Gutierrez)

Agriculture has reviewed the subject lot and request for a "Zone Change" and finds that there are no major impacts to any agricultural activity and to any environmental issues regarding endangered species and habitat. However our agency does recommend and require that proper mitigation measures are in place to prevent spillage of any industrial chemicals associated with "M1" activities. This is to protect our "Northern Aquifer" the major source of Guam's drinking water. To also aide in protecting our environment Agriculture encourages the land owner to incorporate a landscaping plan that includes indigenous and fruit tree species planted on the site. These trees will help filter chemical pollutants and have the added benefits of windbreak protection, shading and an aesthetic component to enhance the area.

Please contact our Agricultural Development Services & Forestry divisions here at the agency for further assistance and guidance at 300-7972 & 7976 respectively. Our Forestry division grows and maintains these native tree species should you choose to incorporate them into the project. Contact their office for assistance and consultation at 300-7976. Please be aware that the increased loss of Guam's native habitat contributes to a diminished capacity to sustain and support a healthy island community. It is vital that all land developers take a proactive step in preventing and causing this loss. To fully benefit and see these eco-friendly practices being used visit our Department of Agriculture Organic and **Environmentally Demonstration Farm.**

Department of Parks and Recreation Government of Guam 490 Chalan Palasyo

Facsimile: (671) 477-2822

Agana Heights, Guam 96910
Director's Office: (671) 475-6296/7
Facsimile: (671) 477-0997
Parks Division: (671) 475-6288/9
Guam Historic Resources Division: (671) 475-6294/5



William N. Reyes
Deputy Director

Ray Tenorio
Lt. Governor

Governor

In reply refer to: RC2016-0082

February 24, 2016

Memorandum

To:

Executive Secretary, Guam Land Use Commission

From:

Director, Department of Parks and Recreation

Subject:

DLM Application No. 2016-12, Zone Change

Lot 5027-5-R1, Harmon, Municipality of Tamuning

Applicant: Sunny Plastic, Guam, Inc., c/o Harry D. Gutierrez

Case Planner: Penmer Gulac

We reviewed the subject and determined that the Zone Change will not affect historic properties within the subject lot, Therefore, we have no objection to the approval of this Zone Change Application.

If you have any questions, please do not hesitate to call us.

Robert S. Lizama



Eddie Baza Calvo Governor of Guam

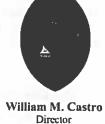
Lieutenant Governor

Ray Tenorio



Government of Guam
P.O. Box 2950 Hagåtña, Guam 96932

Tel: (671) 472-4201/3 Fax: (671) 477-1812



Director

James T. McDonald

Deputy Director

APR 1 1 2016

MEMORANDUM

To:

Director, Department of Land Management

Attn:

Division of Planning

From:

Director, Bureau of Statistics and Plans

Subject:

APPLICATION NO. 2016-12; LOCATION: Lot No. 5027-5-R1, Harmon,

Tamuning; APPLICANT: Sunny Plastic, Guam, Inc; PROPOSED USE: Rezone property from "R-2" (Multi-Family Dwelling) to "M-1" (Light-Industrial) to put

into zoning compliance.

Buenas yan Håfa Adai! Applicant, Sunny Plastic, Guam, Inc. is requesting Lot No. 5027-5-R1 in the village of Harmon, Tamuning to be rezoned from an "R-2" Multi-family residential to "M-1" Light-industrial to put the property into zoning compliance. The subject lot was granted a zone variance in 1989 and expired on July 14, 1997. Sunny Plastic, Guam Inc. acquired the property in 1996 and claims they were not aware of the variance. Currently, two vacant warehouses sit on the property. The subject property has an area of 45,262 (±) square feet or a total of 1.13 (±) acres.

The Bureau has completed its review of the subject application and provides the following comments and recommendations:

1. **Zone Change.** The application lacks the following supporting documents as required by GLUC Form 02-Revised April 2010:

5e. A detailed As-Built Plan of the lot shall include the following:

- 3.) Layouts of utilities and drainage;
- 5.) Approximate gross and net densities allowed on parcel;
- 6.) Feasibility study;
- 7.) Topography;
- 8.) Existing earth faults and sinkholes;
- 9.) Water courses and lens:
- 10.) Reservation, conservation, and historic places;

The Bureau highly recommends the applicant to submit the detailed information as required.

Land Use. The Guam Resource Environmental Assessment Tool (GREAT) Map viewer
indicates the area is zoned for multi-family residential, however, adjacent lots are light
industrial zones. The existing surrounding land uses within the 500 feet to 1,000 feet radius
are mixed uses of commercial, light industrial, and multi-family residential lots.

The North and Central Guam Land Use Plan (NCGLUP) identifies the area as industrial designations. One of the goals of the NCGLUP is to establish land use categories that provide for a mix of residential, commercial, civic, and industrial development to meet future population and employment needs.

Policy LU-1 (g) states: "The Industrial lands are those lands designated for a variety of industrial uses and agricultural, commercial and non-residential uses compatible with industrial uses. Typical uses include manufacturing and processing, wholesaling, large storage and transportation facilities, light industrial and industrial-commercial uses."

The Bureau finds that the proposed use is consistent with the NCGLUP's Future Land Use Map designation.

Policy LU-5 states: "Promote environmental sustainability through a variety of measures. Examples of possible measures include green building design, green spaces in urban areas, green infrastructure, greenway and conservation lands networks, transit-oriented and transit-ready development, improved networks for walking and wheeling, site design to promote renewable energy use, and other measures."

The applicant is encouraged to incorporate sustainable community development as specified in the NCGLUP Goal Land Use 2: Promote sustainable community development of the property.

3. Water Source Protection. The applicant's property is located above the Northern Guam Lens Aquifer (NGLA). The NGLA is an essential resource for Guam and is the primary source of drinking water for eighty percent of the island population. Moreover, the U.S. Environmental Protection Agency has designated the NGLA as Guam's sole source aquifer. Therefore, it is of paramount importance to prevent sources of contamination from entering Guam's water supply. The primary goal for protecting the aquifer is to safeguard human health and the environment by maintaining water quality for continued use.

The Bureau is concerned that industrial activities will have adverse effects to Guam's sole source aquifer. The applicant is advised to consult with the Guam Environmental Protection Agency (GEPA) to:

1.) Implement practices for managing industrial waste to avoid potential contamination and ensure long term protection pursuant to the "Resource

Conservation and Recovery Act of 1976". Practices may include the following, but are not limited to:

- a. Keeping a spill kit close to where spills are likely and ensure all staff know how to use it;
- b. Mopping the workshop floor rather than hosing;
- c. Surrounding storage areas with containment berms to control leaks or spills; and
- d. Employee training to manage waste and materials properly.
- 2.) Comply with an Aquifer Protection Review pursuant to the "Federal Safe Drinking Water Act," § 1424 and "Guam Safe Drinking Water Act," 10 GCA Chapter 53.
- 3.) Coordinate with the Guam Waterworks Authority (GWA) for water resource conservation and ensure the NGLA is protected through compliance with the "Water Pollution Control Act," 10 GCA Chapter 47; "Water Resources Conservation Act," 22 GCA Chapter 5; 10 GCA Chapter 46, as amended by P.L. 17-97, and the Guam Water Resource Development & Operating Regulations.
- 4. Stormwater Management. Managing stormwater is a crucial element in the protection of Guam's vital water resource. Surface runoff carries pollutants into Guam waters causing siltation and increasing sediment loads, which impairs receiving waters. The alteration of vegetated areas into buildings, driveways, parking lots, roads and other surfaces prevent water from filtering into the ground and greatly increases the runoff volume created during storms. Studies show that impervious surfaces directly correlate to increased runoff volumes as well as waterway velocities, erosion, and flooding.

Industrial sites are classified as stormwater hotspots which is defined in the CNMI Guam Stormwater Management Manual as "a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxins than are found in typical stormwater runoff, based on monitoring studies."

The Bureau is concerned that activities generated from the property may severely impair the water quality of the NGLA. If best management practices are not in place before, during, and after construction to control runoff and erosion from the site, this activity can adversely impact drinking water source and surrounding neighbors. Additionally, according to "Stormwater Treatment Practice Criteria and Standards" chapter 2 in the CNMI Guam Stormwater Management Manual:

- 1. "...stormwater runoff from hotspots cannot be allowed to infiltrate into groundwater without prior water quality treatment."
- 2. "...a greater level of stormwater treatment is needed at hotspot sites to prevent pollutant wash off after construction. This will involve preparing and implementing

a stormwater pollution prevention plan (SWPPP) that involves a series of operational practices at the site that reduce the generation of pollutants from a site or prevent contact of rainfall with the pollutants."

Therefore, should this application be approved, the Bureau recommends the applicant to consult with the GEPA on creating and submitting a SWPPP and installing appropriate stormwater methods that will address runoff and hazardous waste.

We also refer the applicant to the "Guam Erosion and Sediment Control Field Guide" for contractors and site inspectors and to the CNMI Guam Stormwater Management Manual for detailed stormwater treatment criteria and standards. An electronic version of the manual and field guide can also be obtained at the GEPA office or the Bureau at www.bsp3.guam.gov.

5. Low Impact Development (LID). The LID approach works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features and minimizing the use of impervious surfaces to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Impervious surfaces from parking stalls, driveways, and rooftops accelerate stormwater runoff. According to the National Oceanic Atmospheric Administration's (NOAA) Coastal Change Analysis Program (C-CAP) Land Cover Atlas, 27.30 percent of Mataguac Spring-Frontal Pacific Ocean Watershed is developed and 12.08 percent is impervious between the years 2005 to 2011. The analysis further identifies areas with impervious surface rates approaching or exceeding 12 percent to 15 percent will likely experience negative impacts to water quality. Severe degradation can be expected when rates reach 25 percent.

The Bureau is concerned that additional impervious surfaces may exacerbate flooding in the area and surrounding neighbors if practices are not in place to manage runoff on the on the property. The applicant is encouraged to implement LID practices such as permeable parking and walkways, grassed swales, island bio-retentions, and/or rain gardens into the landscape as a means to reduce runoff and control erosion from their property. For guidance on these practices, an electronic file of the guidebook *Island Stormwater Practice Design Specifications* is available on the Bureau's website at www.bsp3.guam.gov.

- 6. Entrance/Exit. Should the application be approved the Bureau recommends the applicant to coordinate with the Department of Public Works (DPW) to determine appropriate ingress and egress as well as proper parking configuration and dimensions. Additionally, the Bureau suggests the applicants to work with DPW to ensure all building codes and regulations mandated under 21 GCA Chapter 61 of "The Parking and Loading Space Regulations" and 21 GCA Chapter 67 of "The Building Code".
- 7. Setbacks. The Bureau recommends that proper setback requirements are followed and to include a perimeter or buffer area either through landscaping or fencing to ensure the minimum yard and lot areas is established for industrial zones. The Bureau recommends the applicant to coordinate with the GEPA as stated in §61501 Minimum Yards and Lot

Areas "(c) Lots over the aquifer. Lot sizes and set-back on properties above the aquifer shall be established by the Guam Environmental Protection Agency."

8. Government Clearances. Should future expansion or alteration occur, the applicant is advised to obtain appropriate government agency review and approval to ensure compliance.

The Bureau finds that the proposed zone change is in line with the NCGLUP, however, in light of the points presented in the application, the Bureau finds the proposed zone change may affect the water quality and surrounding areas if best management measures for industrial uses are not in place. The Bureau encourages the applicant to comply with the above listed recommendations.

As government officials, it is our primary responsibility to ensure that the construction and operations of this proposed endeavor are in a manner designed to protect the public health, safety, and to promote the public welfare and convenience. We also encourage the applicants to protect Guam's natural resources and to ensure they are used in a sustainable manner.

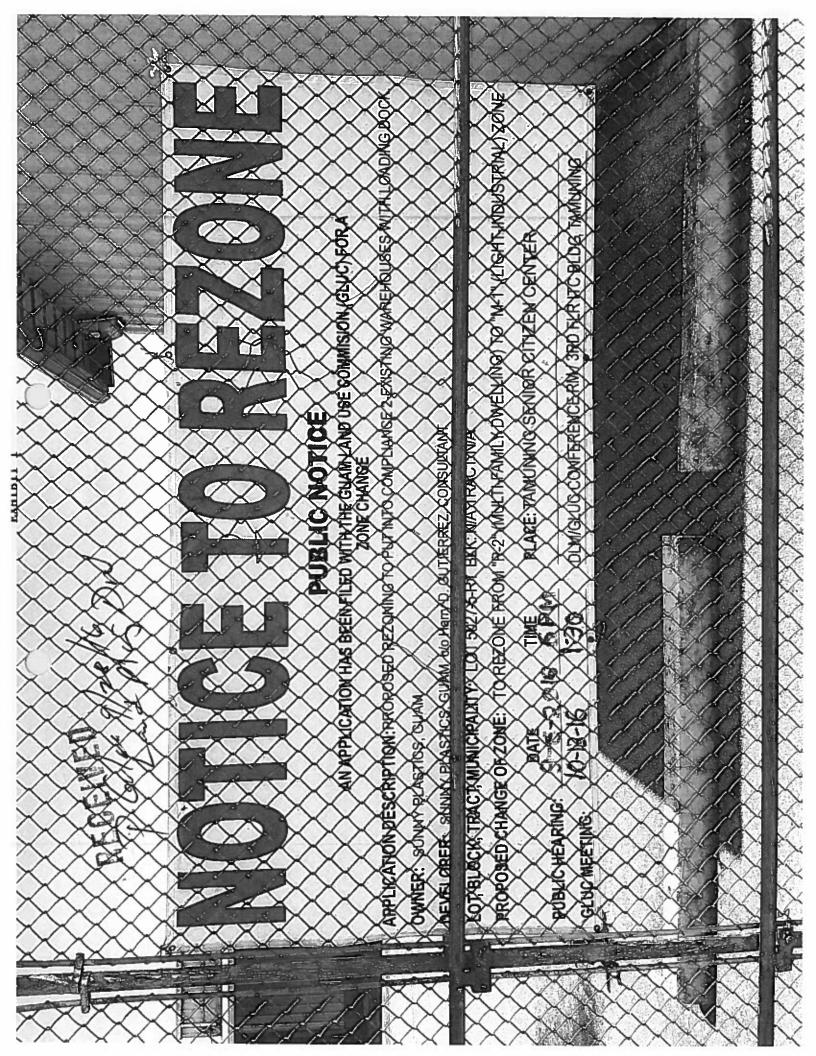
cc: GEPA

DPW

GWA

DPR

GPA





Office of the Mayor

Municipality of Tamuning-Tumon and Harmon "Always the Season for Peace"



October 11, 2016

Guam Land Use Commission

c/o Mr. Michael J.B. Borja Director Department of Land Management

590 S. Marine Corp Dr. ITC Bldg., Suite 733

Tamuning, Guam 96913

Reference:

Rezoning of Lot 5027-5-R1, Harmon, Municipality of Tamuning

From Zone R2 (Multi-family) to Zone M1 (Light industrial zone); Sunny Plastics, Guam

Dear Mr. Borja:

As the Mayor of the Municipality of Tamuning, I hereby acknowledge that at the regular monthly meeting on October 6, 2016 of the Tamuning Tumon Harmon Municipal Planning Council we approved and support the rezoning application submitted herewith by Sunny Plastics, Guam pursuant to the above referenced property.

Considering that all required documentation will be submitted and all Government of Guam Rules and Regulations is followed, I kindly ask that you address this request accordingly.

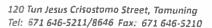
Thank you for your immediate attention and response.

Sincerely,

Louise C. Rivera

Мауог





999 S. Marine Corps Dr. Tamuning, Guam 96913

DECLARATION OF MAILING

- I, EMILYANNE FLORES, hereby declare and state as follows:
- 1. I am over the age of 18 years and not a party to the within entitled action or interested in any event thereof;
- 2. I am an employee of the law office of YANZA FLYNN TIMBLIN, LLP, attorneys for the Alupang Beach Towers Homeowners Association;
- 3. That on August 4, 2016, I caused a copy of the annexed Notice of Special Meeting of the Owners to be deposited in the United States Mail, first class, postage prepaid, addressed to the following at their last known address as follows:

Mr. & Mrs. Inocentes Unit #211 and 300 1633 Scenicview Drive San Leandro, CA 94577

Chang and Sonia Park
Unit #400
Advance Management, Inc.
198 Adrian Sanchez Street, Ste #7

Harmon, Guam 96913

Darren Michael Crisfield Unit #501 P.O. Box 1206 Hagatna, Guam 96932 Younex Builder Corporation Unit #509 P.O. Box 12007 Tamuning, Guam 96931

Vasin Jungtrakoolchai Unit #702 415 Chalan San Antonio Suite 308 Tamuning, Guam 96913

Mr. Ted Digger DIGGER & BUCK LLC Unit #705

348 Chalan San Antonio Street GNI Complex Suite 101 Tamuning, Guam 96913

Paul Lee Multi-Development Unit #812 c/o Blue Pacific Realty P.O. Box 20267 GMF, Barrigada, Guam 96921 Victor Chang, Mary Chang and David Chang Unit #904 BHI Realty P.O. Box 20759 Barrigada, Guam 96921 Taxan Guam Limited Unit #1001 2-2-9 Hongo Bunkyo-Ku Tokyo, Japan 113-8503

Showa Denki Unit #1101 2-7-3 Higashi Shinbashi Minatoku Tokyo 150-0021 Kaga Electronics Co., Ltd. Unit #1001 2-2-9 Hongo Bunkyo-Ku Tokyo Japan 113-8503

Showa Astec Co., Ltd. Unit #1101 2-7-3 Higashi Shinbashi Minatoku Tokyo 150-0021

I declare under penalty of perjury that the foregoing Declaration is true and correct.

Executed this 10 day of August, 2016, at Hagatña, Guam.

_

999 S Marine Corps Dr Tamuning, Guam 96913

NOTICE OF SPECIAL MEETING OF THE OWNERS

To: All Owners, Alupang Beach Tower

Dear Owner,

Pursuant to a call for a Special Meeting by Hee K. Cho, the President of the Alupang Beach Tower Owners Association, and in accordance with Article I, Sections 4 and 5, of the Amended By-Laws of the Alupang Beach Tower Owners Association (the "Association"), you are hereby provided notice of a Special Meeting of the owners of Alupang Beach Tower to be held on August 11, 2016, at 2:00 p.m., at Unit # 1204, Alupang Beach Tower, 999 S. Marine Corps Drive, Tamuning, Guam. The purpose of the meeting is to: (a) approve the First Amendment to the Replacement Declaration of Horizontal Property Regime proposed for Alupang Beach Tower; (b) approve the resubmission of the Associationapproved First Amendment to the Replacement Declaration of Horizontal Property Regime to the GLUC for the purpose of seeking GLUC's re-approval and for the timely filing of a Supplementary Final Public Report; and, (c) to transact such other business as may properly come before the meeting.

Sincerely,

MIN S. CHO, Secretary

HEE K. CHO, President

999 S. Marine Corps Dr. Tamuning, Guam 96913

DECLARATION OF SERVICE

I, SCARLETT CASTRO-DIXON, hereby declare and state as follows:

- 1. I am over the age of 18 years and not a party to the within entitled action or interested in any event thereof;
- 2. That on the 4th day of August, 2016, I caused a copy of the annexed Notice of Special Meeting of the Owners to be served upon the parties hereto, by delivering to, and leaving a copy of the same with, their attorneys of record as follows:

Steve Kasperbauer c/o R. Todd Thompson, Esq. THOMPSON, THOMPSON & ALCANTARA, P.C. DNA Bldg., Suite 801 238 Archbishop Flores Street Hagatna, Guam 96910

Steve Kasperbauer at his usual place of business c/o Alupang Beach Company (Pink Building) South Marine Corps Drive Tamuning, Guam 96913

3. That on August 5, 2016, I caused a copy of the annexed Notice of Special Meeting of the Owners to be served upon Ralph Band, Front Desk of Alupang Beach Towers, Tamuning, Guam.

I declare under penalty of perjury that the foregoing Declaration is true and correct.

Executed this 4th day of August, 2016, at Hagatña, Guam.

SCARLETT CASTRO-DIXON

999 S Marine Corps Dr Tamuning, Guam 96913

NOTICE OF SPECIAL MEETING OF THE OWNERS

To: All Owners, Alupang Beach Tower

Dear Owner,

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Sincerely,

MIN S. CHO, Secretary

HEE K. CHO, President

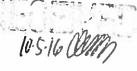
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8/4/16

THOMPSON THOMPSON

AUG 0 4 2016

TIME: 0 33

Paph Bard 08/08/14 15:48



999 S Marine Corps Dr Tamuning, Guam 96913

NOTICE OF SPECIAL MEETING OF THE OWNERS

To: All Owners, Alupang Beach Tower

Dear Owner,

Pursuant to a call for a Special Meeting by Hee K. Cho, the President of the Alupang Beach Tower Owners Association, and in accordance with Article I, Sections 4 and 5, of the Amended By-Laws of the Alupang Beach Tower Owners Association (the "Association"), you are hereby provided notice of a Special Meeting of the owners of Alupang Beach Tower to be held on August 11, 2016, at 2:00 p.m., at old Esmeralda Alupang Beach Tower, 999 S. Marine Corps Drive, Tarriuning, Guam. The purpose of the meeting is to: (a) approve the First Amendment to the Replacement Declaration of Horizontal Property Regime proposed for Alupang Beach Tower; (b) approve the resubmission of the Associationapproved First Amendment to the Replacement Declaration of Horizontal Property Regime to the GLUC for the purpose of seeking GLUC's re-approval and for the timely filing of a Supplementary Final Public Report; and, (c) to transact such other business as may properly come before the meeting.

Sincerely,

MIN S. CHO, Secretary

HEE K. CHO, President

THOMPSON THOMPSON & ALCANTARA A PROFESSIONAL CORPORATION

238 ARCHBISHOP FLORES STREET, SUITE 801

HAGATÑA, GUAM 96910 USA (671) 472-2089 / (671) 477-5206 FAX WWW.TTALAW.NET



April 13, 2016

VIA HAND DELIVERY ONLY

Mr. John Z. Arroyo, Chairman Guam Land Use Commission Department of Land Management Government of Guam ITC Building, 7th Floor 590 S. Marine Corps Drive, Suite 733 Tamuning, Guam 96913

Re: Alupang Beach Tower Homeowners Association: Request For Issuance of Supplementary Final Public Report, Alupang Beach Tower Condominiums, Lot Numbers 2015-1-REM-NEW-2 and 131-REV-

UNIT 1, Tamuning, HPR 92

Dear Chairman Arroyo:

This office represents Alupang Beach Club, Inc. (hereinafter "ABC"). On behalf of ABC, we write to formally object to the Replacement Horizontal Property Regime ("HPR") proposed for Beach Tower ("ABT") by the Alupang Beach Tower Homeowners Association, which is currently before the Guam Land Use Commission ("GLUC" or the "Commission") as a request for issuance of a first supplementary final public report, as referenced above.

During the previous Commission meetings over the years, Commissioners have expressed concern about the complexity of ABT's proposal and its impact. In particular, there has been concern about setting precedent for future applicants if ABT's proposal were to be hastily approved. ABC respectfully requests that the Commission take a "time out" and table further action on the instant application until such time as proper notice can be given to and consent received by those concerned.

Chairman John Z. Arroyo April 13, 2016 Page 2 of 8

BACKGROUND

ABC submits this objection with all due respect to the Commission and its members. ABC is not seeking to be obstructionist or to interfere with the general rights of property owners to develop their property to its highest and best use. However, ABC and other minority owners continually find themselves taken advantage of by the majority Cho group owners, who have exhibited a pattern of running the homeowners association as if the group owned all of the units, in complete disregard of the rights of the minority owners.

By way of background, it should be emphasized that this is not the first time the Cho group, as majority owners of ABT have disregarded the rights of the minority owners. In fact, on July 9, 2004, the Superior Court of Guam was so concerned about self-dealing and disregard of minority owner rights at ABT that it concluded that the Cho group was "unable to act independently and in the best interest of all its members." Accordingly, the court appointed a receiver to protect the interests of ABC and other minority Association members. See Alupang Beach Club, Inc. v. Hibari Guam Corp. et al, Civil Case No.—PCV1983-03 (Decision and Order July 9, 2004) (per Lamorena, J.), at 8.

It is apparent that the Cho group has not learned the lesson that the Superior Court attempted to teach. Regrettably, the group has again disregarded the rights of the minority owners in advancing the instant Replacement HPR, without proper notice or consent, and which would if approved be detrimental to ABC and other minority owners.

The March 18, 2016 cover letter signed by Min S. Cho states that the notice of action recorded on August 8, 2012 under document number 840122 "approved the conversion of 102 existing rooms in a hotel unit to individual condominiums. It also approved the conversion of commercial spaces into 20 individual condominium units." The letter continues, "[a]fter the notice of action was issued the condominium contained 158 individual condominium units and two commercial units. Unfortunately a final public report was not issued after the notice of action was recorded due to an oversight on the part of the applicants."

The Commission's July 16, 2012 Notice of Action was recorded on August 8, 2012. See document number 840122. Prominently displayed on the face of the document is the following notation:

took up

Chairman John Z. Arroyo April 13, 2016 Page 3 of 8

IMPORTANT NOTICE - READ CAREFULLY

"Pursuant to section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLU C/GS PC project within one (one) year of the date of recordation of this notice of action, otherwise, the approval of the project as granted by the commission shall expire." *Id.* (emphasis in the original.)

Thus, while the Commission issued a notice of action back in 2012, the Association admits that a final public report was not issued "due to an oversight on the part of the applicants" and that "[c]onsequently, the action before the Commission now is to request reappproval of the First Amendment to the Replacement Declaration in order to timely file the Supplemental Public Report." Since—pursuant to the prominent notice which appears in the face of the July 16, 2012 notice of action—"approval of the project as granted by the Commission[has] expire[d]," it is now incumbent on the Commission to start afresh with its evaluation of the project, not simply to rubber stamp what was done without proper notice four years ago.

ABC'S STANDING TO OBJECT

ABC is the lessee of commercial unit #2 and operates a recreational business in the area adjacent to the ABT tower. ABC's business and property interests will be directly affected by the proposed new HPR. Moreover, ABC has a valid voting interest in the project by virtue of the November 30, 1992 Condominium Unit Lease Agreement between Margarita H. Inocentes and ABC Associates, which lease is of record at the Guam Department of Land Management as Instrument Number 480490. The lease was duly assigned to ABC on February 27, 1996, via Instrument Number 542681, and it expires in 2031. The Lease expressly provides that "tenant shall be considered the owner of the premises for purposes of membership in the organization, with full voting rights therein." Id. at §29. By virtue of the lease, ABC has full right to vote the interests of the property owner.

The reason that ABC addresses the issue of standing is that the Association and the Cho Group previously attempted to challenge ABC's standing to object. The Superior Court of Guam firmly rejected that position, holding that "Defendant's argument that Plaintiff [ABC] has no standing cannot be sustained." Alupang Beach Club, Inc. v. Hibari Guam Corp. et al, Civil Case No. CV1983-03 (Decision and Order July 9, 2004) (per Lamorena, J.) at 3.

Chairman John Z. Arroyo April 13, 2016 Page 4 of 8

OBJECTIONS

1. Lack of Notice

Sufficient notice was not provided to ABT unit owners either in 2012, when the application was originally made or now, when it comes again before the Commission. First, no notice was provided of a special meeting for the purpose of promulgating the replacement HPR as required by the Homeowners' Association Bylaws. See Bylaws, Article I, Sections 4 and 5.

In addition, the Association has not provided proper notice of these proceedings before the GLUC. An applicant seeking an amendment to a site plan which was previously approved by the GLUC must give personal notice at least 10 days prior to the hearing to property owners within a radius of 500 feet. 21 G.C.A. §§61303(b) and (c). In this instance, the applicant has not presented any evidence or made any showing that it has given the required notice to adjoining landowners either in 2012 or in 2016.

ABC, which holds a voting interest in ABT and, moreover, has its office well within the 500 feet zone, only learned about these proceedings by reading a legal announcement in one of the local newspapers. The Association may claim that it gave proper notice. However it has failed to prove compliance with its notice obligations. Essentially, all the Replacement HPR packet says in this regard is that because the Cho group is the 75% owner of the project, it effectively gave notice to itself. Needless to say, this is not how notice is properly to be given.

2. Lack of Consent

Even if the Association had discharged its burden of affording timely and sufficient notice of the proposed Replacement HPR, it has failed to demonstrate that it has received the requisite consent for this action. In fact, Guam law requires the approval of *all* unit owners in order to effectuate the requested alteration to the HPR. Specifically, 21 GCA §45108 requires unanimous consent of all apartment owners before any work can be performed which would "reduce the value" of the property or "add any material structure." Moreover, 21 G.C.A. §45106(b) requires consent of all of the apartment owners affected when any alteration is made to the "common interest" appurtenant to each apartment as expressed in the existing HPR declaration.

In addition to these statutory provisions, the HPR contains provisions regarding a an owner's ability to make a substantial alteration to the HPR, as follows:

Chairman John Z. Arroyo April 13, 2016 Page 5 of 8

Paragraph 21. Alteration and transfer of interests: The common element interest and easements appurtenant to each unit shall have a permanent character and shall not be altered without the consent of all of the unit owners affected, expressed in an amendment of this replacement declaration and duly recorded with the Department of land management, government of Guam. [HPR, provision 21, page 33.]

Based on the applicable statutes and HPR provisions, the Applicant cannot effectuate the substantial alteration to the HPR being requested absent unanimous consent, which it has neither sought nor received. The proposed alteration would tend to reduce the value of the property. The change from a hotel facility to individual condominium units for sale or lease would reduce the value of the other minority condominium units because the Alupang Beach Tower would then be subject to a greater density of condominium owners. Moreover, as discussed more fully below, the alteration proposed by the Cho group affects the "common element" interest of the Alupang Beach Tower.

The current request to change the current ABT HPR to eliminate the 102 room hotel and convert the space into 120 condominiums, and to construct an additional 20 new condominium units benefits only one owner, the Cho group, to the detriment of ABC and other unit owners.

3. Adverse Parking Impact

ABT has is no available street parking adjacent to the complex. Thus, all ABT parking needs must be accommodated by the parking garages on-site. Accordingly, parking arrangements are of crucial importance at ABT.

The declaration of horizontal property regime for ABT was filed with GLUC on June 5, 1992. The declaration provides that there shall be 253 parking spaces for the project. After construction commenced, commercial businesses and additional residential units were constructed in areas that had been dedicated to parking and common areas. The new HPR proposes to further reduce available parking spaces while at the same time placing a much higher demand on the spaces that are available.

The HPR fails to take into account the fact that condominium utilization entails substantially more private vehicles than hotel utilization. Hotel guests tend to need no more than one parking space per unit, even if the unit is occupied by multiple guests. Many tourists need no spaces at all because they rely on buses or taxis for transportation.

Chairman John Z. Arroyo April 13, 2016 Page 6 of 8

Condominium residents, on the other hand, tend to need as many parking spaces as there are adult occupants. Utilization is dramatically higher for condominium usage.

This Commission has expressed profound concern about the adequacy of parking at the ABT project. For example, in August 14, 2008 Commission meeting, Chairman Lather, who was then evaluating the ABT's proposed HPR for changes said the following: "So based on what you [ABT representative Brooks] said, the first obvious question leaps right out at me is, you told us that the justification for the conversion of hotel rooms was based on the lack of parking, so if you go back to condos would you have that problem again?

4. <u>Density Concerns</u>

Throughout the long history of the ABT project, this Commission has also expressed concern about the density implications of the ABT project. A review of the minutes of Commission meetings reveals long debates between former Chairman Lather, other Commission members and ABT representatives about approving a proposal that effectively endorsed density of 400 square feet for each dwelling instead of the customary 1250 square feet benchmark.

For example, during the June 28, 2012 meeting, Chairman Lather asked Commission consultants to advise the Commission about the propriety of the ABT density implication as follows:

<u>Chairman Lather</u> Let me ask Richard, Joe and Martin, you guys have been around a long time. Have we ever used 400 to calculate density for a multifamily project in any zone?

<u>Joe Santos</u> In any zone, multifamily dwelling 1250; that's the set number.

Chairman Lather Never in history?

(<u>Joe Santos</u> responded never in history).

* * *

<u>Chairman Lather</u> The problem there is that, in my thinking is that if we do it we're going to have to do it forever. How can we deny the next person?

Chairman John Z. Arroyo April 13, 2016 Page 7 of 8

The record is not at all clear how these concerns were addressed prior to the 2012 approval of ABT's application. The Commission should be concerned about the density regarding the instant application, but more importantly about setting adverse precedent going forward.

5. <u>Detrimental to ABC's Business</u>

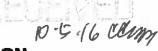
The Proposed arrangement would be demonstrably detrimental to ABC. When actively operated as a hotel property, ABC experienced on average 20-30 customers per day from ABT hotel guests. The Cho group has been leasing 95% of the 102 hotel units as condos for the past 12 years. During that time, ABC has averaged less than five ABT customers a month, which situation will be made fixed and permanent upon ABT's conversion to an all condominium project. That is a loss of roughly 20 customers per day, at an average net sales price of \$65.00 per customer, 310 days per year.

6. The Cho Group has been Operating ABT in a Manner Inconsistent with the Existing HPR Without GLUC approval

The proper procedure is for an applicant to request approval from the GLUC before changing a site plan. In this instance, however, the Cho group has gone forward with various constructions of additional buildings and facilities at ABT and changed uses of existing facilities without first seeking GLUC approval.

In the minutes of the GLUC August 28, 2008 meeting, Mr. Cho candidly admitted that he had stopped running a hotel and was operating all 102 hotel units as condos with a "95% occupancy" based on long term leases to military and local residents. Mr. Cho attended that meeting to seek permission to change the ABT HPR from hotel to condo utilization and not to tell the GLUC that he already done so without its permission. Essentially, the Applicant is attempting to use its non-compliance with the existing HPR as a reason for the Commission to change it. This is a complete violation of agreements with ABC and, more disturbingly, an act of open defiance of this Commission's authority to approve (or disapprove) HPR changes or amendments.

The Cho Group's fast and loose utilization of the subject units has vast consequences. Essentially, the Group has been trying to have things both ways. It has been leasing 95% of the 102 hotel units as condos for the past 12 years at rents of around \$2,500.00 per month while ostensibly operating as a hotel and presumably has not paid the Government of Guam the estimated 11% hotel occupancy tax due.



999 S Marine Corps Dr Tamuning, Guam 96913

NOTICE OF SPECIAL MEETING OF THE OWNERS

To: All Owners, Alupang Beach Tower

Dear Owner,

Pursuant to a call for a Special Meeting by Hee K. Cho, the President of the Alupang Beach Tower Owners Association, and in accordance with Article I, Sections 4 and 5, of the Amended By-Laws of the Alupang Beach Tower Owners Association (the "Association"), you are hereby provided notice of a Special Meeting of the owners of Alupang Beach Tower to be held on August 11. 2016, at 2:00 p.m., at old Esmeralda Alupang Beach Tower, 999 S. Marine Corps Drive, Tarnuning, Guam. The purpose of the meeting is to: (a) approve the First Amendment to the Replacement Declaration of Horizontal Property Regime proposed for Alupang Beach Tower; (b) approve the resubmission of the Associationapproved First Amendment to the Replacement Declaration of Horizontal Property Regime to the GLUC for the purpose of seeking GLUC's re-approval and for the timely filing of a Supplementary Final Public Report; and, (c) to transact such other business as may properly come before the meeting.

Sincerely.

MIN S. CHO, Secretary

HEE K. CHO, President

SUPPLEMENT

TO

First Amendment To the

REPLACEMENT

Declaration of

Horizontal Property Regime of the

ALUPANG BEACH TOWER

September 30, 2016

- 1. Letter to Chairman dated September 26, 2016
- 2. Alupang Beach Towers Owners Association Special Meeting on August 11, 2016

Brooks Concepcion Law, P.C.

247 Martyr Street, Ste. 101 Hagatna, Guam 96910-5190

Terrence M. Brooks, Esq. Georgette Bello Concepcion, Esq.

September 26, 2016

Telephone: (671) 472-6848 Facsimile: (671) 477-5790 Email: mail@guamlaw.net

Mr. John Z. Arroyo, Chairman
Guam Land Use Commission
Department of Land Management
Government of Guam
ITC Building, Suite 703
590 S. Marine Corps Drive
Tamuning, Guam 96913

SUBJECT: Alupang Beach Tower (ABT)

Dear Chairman Arroyo:

This office represents Mr. Hee K. Cho and Min S. Cho. Attorney R. Todd Thompson wrote to you in April objecting to the application before the GLUC requesting a Supplementary Final Public Report for the ABT. This letter is sent to point out the many mistakes contained in Mr. Thompson's letter.

Mr. Thompson begins by bringing up a court suit that has little or nothing to do with this pending action. The suit, as he points out, was directed mainly at Hibari Guam Corp., which was trying to sell its interest in ABT to the Chos. That suit was settled and Mr. Steve Kasperbauer, the president of Alupang Beach Club, Inc., appeared before the GLUC to withdraw his objections to the sale and support it.

It should also be noted that Mr. Kasperbauer and Mr. Henry Simpson, both of whom objected to this request at the last GLUC hearing where it came up, were originally developers of ABT. When ABT was constructed the 108 units that the Chos' seek to revert to condos were actually condos. The objectors are objecting to the Chos' doing something that they did when they were involved in the development of ABT.

With respect to the specific objections that begin on page 4 of Mr. Thompson's letter, we note the following:

1. The changes requested were approved at an ABT homeowners meeting. Minutes of the meeting were provided in the application. To address concerns at the last

Mr. John Z. Arroyo, Chairman Guam Land Use Commission SUBJECT: Alupang Beach Tower (ABT) September 26, 2016 Page 2 of 3

meeting, the ABT homeowner's association met again and again approved the plan. Copies of those minutes have been provided to the GLUC. The assertion that adjacent property owners must be notified is false. The Chos' are not seeking a variance, like Mr. Kasperbauer and Simpson did. No external or structural changes are being made to ABT.

- 2. The claim that 100% assent by all unit owners is necessary is also false. ABC's common interest in the property is not being altered. It will still have the same common interest after the Supplementary Public Report is issued as it had before. All of its easements and limited common elements will be untouched. ABC will be basically unaffected by the changes being sought by the Chos'. No "substantial alteration" will be made to the condominium. The basic change is that 108 hotel rooms that are now considered to be one Unit will be 108 separate condominium Units.
- 3. The adverse parking impact is also bogus. ABC will still have the same number of parking spaces that it has had since ABT has opened. There are sufficient parking spaces for all of the units.
- 4. The density concerns were addressed and dismissed. The GLUC fully and fairly considered this important issue and found that the application was within the regulations imposed by law. Again, Mr. Kasperbauer participated in the original development of ABT. Is he now saying that he violated density requirements when it was built?
- 5. Now, we are getting to the heart of Mr. Kasperbauer's objections. Apparently he believes that ABT should be operated in a manner that is best for him and to the disadvantage of the other 97% of owners. As he noted in Mr. Thompson' letter, ABT has been operated as long term rentals for many years, at least since 2012. Whether the application is allowed or not, the Chos' are not going back to operating ABT as a hotel. This point is moot either way.
- 6. The letter's final point is also completely without merit. Mr. Thompson claims that ABT has undergone "various constructions of additional buildings." Mr. Thompson is apparently unaware that the Chos' have made no changes to the structure of the building or added facilities to the building since they acquired ABT.

Mr. John Z. Arroyo, Chairman Guam Land Use Commission SUBJECT: Alupang Beach Tower (ABT) September 26, 2016 Page 3 of 3

We have prepared a power point presentation that will be shown at the next hearing where this matter comes up. However, we also wanted to present a written reply to the specious arguments contained in Mr. Thompson's letter.

Sincerely,

Terrence M. Brooks, Eso.

Alupang Beach Towers Owners Association Special Meeting on August 11, 2016 Meeting Minutes

Pursuant to the Notice of Special Meeting of the Owners (the "Notice"), attached hereto, a special meeting of the owners of the Alupang Beach Tower (the "Owners") was held on the ground floor of the Alupang Beach Towers, on August 11, 2016 at 2:00 p.m..

Present at the special meeting were the following owners: Hee K. Cho, in his individually capacity and as proxy for Jae Cho; Min Cho and Darren Crisfield. Hee K. Cho and Min Cho, with the proxies, represented approximately 93% of the ownership of units at Alupang Beach Tower. Also present at the special meeting were the following individuals: Michael D. Flynn, Jr., legal counsel for the Alupang Beach Tower Owners Association; Terrence M. Brooks, legal counsel for Hee K. Cho; Darren Crisfield, Owner Unit 501; Randall Todd Thompson, attorney and proxy for Steven Kasperbauer owner of Alupang Beach Club, tenant of CU1; and, Daniel D. Swavely, consultant for Hee K. Cho.

The special meeting was called to order at 2:05 p.m. and presided over by Attorney Terrence M. Brooks on behalf of President Hee K. Cho.

Proof of Notice to Owners, pursuant to Sections 4 and 5 of the Amended By Laws of the Alupang Beach Tower Owners Association (the "Association"), as Amended July 11, 2012 (the "ByLaws"), was presented to Attorney Brooks.

Attorney Brooks stated that the special meeting was called to:

- (a) approve the Replacement Horizontal Property Regime proposed for Alupang Beach Tower; and
- (b) transact such other business as may properly come before the meeting.

On behalf of Hee K. Cho, Attorney Brooks explained that the First Amendment to the Replacement Declaration of Horizontal Property Regime was previously approved by the ABT HOA and the Guam Land Use Commission ("GLUC"), in accordance with the GLUC's Notice of Action, dated July 16, 2012, recorded as Document Number 840122, on August 08, 2012. However, the Final Public Report was not timely filed, so the GLUC approval expired. At the GLUC hearing on April 13, 2016, the Commission directed that further action would be postponed until the Association convened for purposes of again addressing the Replacement Horizontal Property and approved seeking a First Supplementary Final Public Report.

Mr. Brooks addressed to Mr. Swavely six issues raised by R. Todd Thompson, Attorney for Steve Kasperbauer (owner of CU1) in Attorney Thompson's April 13, 2016 letter to the GLUC. Mr. Swavely responded to the questions as follows:

Question #1 - Does the Replacement Declaration seek amendment to the Condominium Project's site plan?

Answer-NO.

Question #2 - Does the Replacement Declaration reduce the value of the property?

Answer - NO.

Question #3 - Does the Replacement Declaration add any material structure to the property?

Answer - NO.

Question #4 - Does the Replacement Declaration alter the common interest appurtenant to any apartment, as expressed in the Declaration?

Answer - NO.

Question #5 - Does the Replacement Declaration reduce the size or square footage of the existing residential units?

Answer - NO.

Question #6 - Does the Replacement Declaration provide for adequate parking?

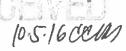
Answer - YES.

A motion was made by Hee K. Cho, and seconded by Darren Crisfield, to again approve the First Amendment to the Replacement Declaration of Horizontal Property Regime and request from the GLUC a First Supplementary Final Public Report. Mr Thompson reiterated the objections posed in his letter to the GLUC. A vote was taken by the Owners, and the motion carried with more than 93% voting in favor and one vote against coming from Mr. Kasperbauer's proxy, Mr. Thompson.

A motion was made by Hee K. Cho, and seconded by Darren Crisfield, to resubmit the Association-approved First Amendment to the Replacement Declaration of Horizontal Property Regime to the GLUC for the purpose of seeking GLUC's re-approval and for the timely filing of a Supplementary Final Public Report. Mr. Thompson's objections were noted. A vote was taken by the Owners, and the motion carried with more than 93% for and one vote against coming from Mr. Kasperbauer's proxy, Mr. Thompson.

No further business came before the Owners at the special meeting.

A motion was made by Hee K. Cho and seconded by Darren Crisfield to conclude the special meeting. There was no discussion on the motion. A vote was taken by the Owners and the motion was unanimously carried.



999 S Marine Corps Dr Tamuning, Guam 96913

NOTICE OF SPECIAL MEETING OF THE OWNERS

To: All Owners, Alupang Beach Tower

Dear Owner,

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Sincerely,

MIN S. CHO, Secretary

HEE K. CHO, President